United States Court of Appeals

for the Second Circuit

PETITIONER'S BRIEF AND APPENDIX

76-4234&76-4239

UNITED STATES COURT of APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

JO-JO MANAGEMENT CORP., d/b/a GLORIA'S MANOR HOME FOR ADULTS, AND MEDICAL & HEALTH EMPLOYEES UNION, LOCAL 4, OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, AFL-CIO,
Respondents.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

VOLUME II

ELLIOTT MOORE,
Deputy Associate General Counsel,

National Labor Relations Board
Washington, D. C. 20570

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P/S

UNITED STATES COURT OF APPEALS
FILED
MAR 4 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

the second page of General Counsel's Exhibit 7, and I received that.

Thank you, gentlemen. We will proceed, however, to 11 so there will be no confusion to G.C. 11 for the next exhibit.

At this time I would like to take a break and make that call to try to arrange for next week, and General Counsel has indicated this is as good a time as any to break.

So let's take fifteen minutes.

(REcess taken.)

JUDGE SARRICA: On the record.

MR. EISENBERG: I show you General Counsel's Exhibit 7 in evidence.

BY MR. EISENBERG:

Q Are those the two documents Mr. Fineguerra gave you?

(Handing documents to witness.)

A Yes, it is.

Q Does your signature appear on --

A Yes, sir, it does.

Q -- either of those documents? Is that your signature?

A Yes, it is.

Q Did you date it?

A Yes, sir, I did.

Q Is the date which appears next to your name in your writing?

identification as General Counsel's Exhibit 11.

(The above referred document was marked General Counsel's Exhibit No. 11 for identification, as of this date.)

BY MR. EISENBERG:

Q I show you General Counsel's Exhibit 11.

Is that your signature which appears?

(Handing document to witness.)

A Yes, sir.

Q Did you sign it?

A I did, sir.

Q Is all the writing on that card your writing?

A Yes, sir.

Q Is the date on that card your writing?

A Yes, sir.

Q Did you date the card when you signed it?

A Yes, sir.

Q Where did you get that card?

A From Mr. Morales.

Q Where was he when he gave it to you?

A In my house.

Q Did he give you anything else?

A He gave me more of them.

Q Did he tell you anything about those cards --

MR. SCHWARTZ: Objection.

Q -- that he gave you?

MR. SCHWARTZ: Objection.

For the record, how is it possible that any conversation with Mr. Morales concerning authorization cards that he gave to her binding upon either Respondent in this matter?

JUDGE SARRICA: Overrule. Proceed.

MR. EISENBERG: Could we have the last question read back?

JUDGE SARRICA: Yes. Will you please, Mr. Reporter, read the last question by the General Counsel.

(Whereupon, the reporter read back the last question.)

A If I could get -- obtain signatures from my other co-workers.

Q Did you do that?

A I did, sir.

Q Where were you when you did that?

A Oh, I gave some of them to --

Q Speak up, please.

A I gave some of my co-workers, if I couldn't -- if they didn't have time off --

Q Where were you when you gave it to them?

A In Gloria's Manor.

Q All of them?

A Most of them.

Q Did any of them sign it in your presence?

A Yes.

Q Do you remember who?

A Mary Abernathy, Joan Gruenke, John Breen, Rita O'Keefe.

Q The last two, they're employees of Gloria's?

A Yes. They still are. Nora Donagheu.

Q Can you remember anybody else at this time?

A Arleen Slatery.

MR. EISENBERG: I offer this card in evidence as General Counsel's 11.

MR. SCHWARTZ: I have the same objection as I had last time.

JUDGE SARRICA: Mr. Reich, your response? Do you have any objection?

MR. REICH: Yes, Your Honor.

I object to it as utterly irrelevant, immaterial, incompetent.

JUDGE SARRICA: I thank you.

General Counsel's Exhibit 11 is received.

(The above referred document marked General Counsel's Exhibit No. 11 received in evidence, as of this date.

BY MR. EISENBERG:

Q Did you meet Mr. Morales again after he gave you the cards?

A Yes, sir.

Q Where did this take place?

A Hotel Roger's.

Q Who was present?

A Rita O'Keefe, Nora Dunagheu, Joan Gruenke, Arleen Slatery, Barbara Davis, Evelyn O'Connor, Ann Donnegan, myself, Mary Abernathy, Wanda Sullivan, Joanne Gruenke, Billy Cleary.

Q Do you remember when this meeting occurred?

A Tommy O'Toole.

Q I'm sorry.

A That's about all I can think of.

Q Do you remember when this meeting occurred?

A Late January.

Q Did you have anything to do with bringing this meeting about?

A Yes, sir.

Q What was that?

A Well, we discussed this contract.

Q No, no.

Did you have anything to do with bringing this meeting about?

A Yes.

Q Tell us what you did?

A Well, I told everybody that there was to be a meeting held at Roger's Hotel on that certain evening at 8:30 and we would be all there.

Q Did you discuss this with Mr. Morales before you told the employees about a meeting?

A Yes, sir.

Q Do you remember when this was that you discussed it with Mr. Morales?

A Over the telephone.

Q When you informed the people about the meeting, where were you?

A Gloria's Manor. We were working.

Q Where did you speak to most of these people in Gloria's Manor?

A On their breaks, in the dining room.

Q Where?

A In the dining room.

Q I direct your attention to the beginning of the week of February 24th.

During that week did you have any contact with any Local 4 delegate?

A Yes.

Q Can you tell us when the first contact with Local 4 delegate occurred?

A Well, Mr. Gulino come --

Q When?

A I can't tell you when.

Q Sometime during the week beginning February 24th?

A Yes.

Q Who did you have contact with?

A Mr. Gulino come in the dining room.

Q Were you in the dining room at the time?

A Yes, sir.

Q Did he speak with you?

A Yes, sir.

Q Can you tell us what he said to you?

A Well, he had a petition.

MR. REICH: Objected to and move to strike the answer as not responsive.

The question is what did he say to you.

Q Please listen to the question, as best you can.

Did he say anything to you?

A Yes.

Q What did he say to you?

A He wanted me to sign a petition.

Q What did he say?

He asked you to sign something?

A Yes.

Q Did he show you what he wanted you to sign?

A Yes.

Q Can you describe what he showed you?

A Well, it's a pices of paper with writing on the top of it.

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Q Did you read the qriting?

A No, I did not, sir.

Q What did he say?

A He said that if I didn't sign that, I was no longer the shop steward, and I would be fired.

Q Did he say what that paper was in any way?

A No.

Q You said you saw some writing on it?

A Yes, sir.

Q Can you recall what that writing was?

A Not at all, sir. I pushed it aside.

Q When he asked you to sign it, what did you say to him?

A I said where have you been?

Q What did he say?

A He said that he had been busy.

Q Did he do anything else with that piece of paper in the dining room?

A Yes.

He was asking another co-worker of mine to sign it.

Q Did he say why you would be fired?

A Yes.

Because I didn't sign that petition, that piece of paper.

Q Did he say anything about -- well, did he say anything else that you can recall?

A Just that if I did not sign that piece of paper I would be fired.

Q Did he say anything about dues?

A Oh, yes. My union dues would be returned.

Q Were those his words?

A Yes.

Q Do you remember his exact words?

A No, sir, I can't remember his exact words, I'm sorry.

Q After that time, did you have a conversation with Mr. Hagler?

A Yes, sir.

Q Would you tell us when that was?

A In his -- when?

Q When?

A I don't understand.

Q When? What time?

A Did you mean after February 24th?

Q Well, did it occur after February 24th?

A Well, I had a meeting with Mr. Hagler after February 24th in his iffice.

Q Do you remember when that occurred -- the date?

A No, I don't, sir.

Q Did Mr. Hagler talk to you?

A Yes.

Q What did he say to you? Do you recall?

A In the dining room.

A No, I don't, sir, I'm sorry. Not at this moment.

Q Did he give you anything?

A Oh, yes, he did. He gave me a check for my union dues.

Q Were you alone in the office with him?

A Yes, sir, I was.

Q Now, can you recall what he said to you?

A He just said that he was told by the union to give me this check.

Q What did he hand you?

A He handed me a check.

Q For how much?

A Twenty-four dollars.

Q Did he say what the check was for?

A Union dues.

Q Did anything else occur?

A Nothing, sir.

Q Did you say anything to him?

A I said thank you, and I went.

Q What did you do?

A I said thank you, sir, and I left.

Q Did he say anything else to you at all that you can recall?

A Well, that he was sorry he had to do this, but that the Union --

Q At the time he gave you the check?

A No. At that time, no. Nothing. I can't remember.

Q Do you know if other employees received similar checks?

A Yes, sir.

Q Who were those?

A Wanda Sullivan --

MR. SCHWARTZ: If Your Honor, please, we have a stipulation in the record on the dates. We have stipulation in the record concerning dues. I don't know what more this gentleman is trying -- why are we wasting her time --

JUDGE SARRICA: Other than her knowledge that the others received such union dues refund checks, what further do you wish to --

MR. EISENBERG: I want to establish that this witness knows that there were any other employees other than the ones she may mention who received it.

MR. SCHWARTZ: She already asked and answered that question. She knows --

MR. SARRICA: Other than those that we stipulated to?

MR. EISENBERG: Yes.

MR. SCHWARTZ: That's material because it's outside of the complaint.

JUDGE SARRICA: The complaint says that the conditions weren't the same. We have to also take those outside of

those discharged.

MR. SCHWARTZ: But the question is who else received the checks.

JUDGE SARRICA: Overruled.

BY MR. EISENBERG:

Q Do you know who else received similar checks?

A Yes, sir, I do.

Q Would you tell us who those people were?

A Wanda Sullivan, Mary Abernathy, Billy Cleary and Joan Guenke.

MR. SCHWARTZ: These are all people within the complaint.

Q Do you know if anybody else received checks at this time?

A Maria Lapaz.

Q Anyone else?

A No, sir. I think that was it.

Q How did you happen to go to Mr. Hagler's office when he gave you back the check?

A Mr. Hagler was in the dining room when I was in the dining room and he was eating. And he called me to him. And he told me that after I had -- was done in the dining room, I was to go in to his office and see him.

Q And you did that?

A Yes, sir, I did.

Q I direct your attention to Friday the 28th of February. Did you ever see any Local 4 delegate that day?

A Yes, sir, I did.

Q Can you describe how you came to see a Local 4 delegate that day?

A Well, it was -- some of my co-workers called over the loud speaker and --

Q Did you hear a name over the loud speaker?

A Yes, I did. I heard Billy Cleary's name, Mary Abernathy's.

Q What happened after you heard the names?

A Well, I didn't take notice of it right away, but Billy Cleary come back in to the dining room and he told me --

MR. SCHWARTZ: Objection.

Any conversation that she had with Billy Cleary is not binding upon the Respondents.

JUDGE SARRICA: Read the question to me, please.

(Whereupon, the reporter read back the last question.)

JUDGE SARRICA: Your objection is overruled. Answer --

THE WITNESS: May I answer?

JUDGE SARRICA: Yes.

THE WITNESS: Thank you.

Billy Cleary come back in to the dining room and he come over to me and he said, Kay, I have just been fired. I said what? He said yes. So I said, who fired you? He

Q Sometime later you found out?

said --

MR. SCHWARTZ: May I have an objection to these line of questions, please, and answers.

JUDGE SARRICA: I will allow the witness to finish her answer.

Q Will you speak up, I'm having trouble hearing you back here.

MR. SCHWARTZ: If Your Honor please, will you note an objection to the whole line of questioning as to conversations she had with Mr. Billy Cleary.

JUDGE SARRICA: Your objections are noted.

MR. SCHWARTZ: Thank you.

A Billy came to me and told me that he had just been fired. And I said for what? And he said a Mr. Henry Finoguerra was by the telephone operator's desk, and that he had asked him for $71 back dues.

Q When you heard this, did you do anything?

A So I immediately went by the -- into the lobby of the hotel --

Q Who did you see when you got there?

A I saw Mr. Finoguerra.

Q Did he say anything to you when you went to the lobby?

A He said, oh, Kay, I'm glad to see you. He said I want you to sign this too.

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Q Did he show you something?

A Yes.

He showed me a petition -- a piece of paper with writing on it for me to sign.

Q Did you read it?

Did he --

A No, I didn't read it. I just pushed it aside.

Q Did he tell you what it was in any way?

A He didn't tell me anything because I wouldn't listen, I didn't hear anything.

Q What did he say to you?

A He told me that I owed the union $65, and if I didn't pay it, I was fired.

Q This was on Friday, the 28th of February?

A Yes.

Q What did you say to him?

A I said impossible, I was hired by Mr. Hagler and only Mr. Hagler can fire me.

Q When he asked you about $65, did you reply to him?

A I said what's that for, $65.

Q What did he say?

A For union dues and initiation fees, I believe.

Q He did say initiation fees?

A I believe.

Q You're sure?

A I believe he did.

Q Okay.

What did you say when he said that to you?

A I said I'm sorry, sir, I don't owe the union anything, I've been paying my union dues.

Q Anything else?

A I'm a member in good standing.

Q Did Mr. Fineguerra say anything else to you of any kind concerning the $65 other than what you've just stated here?

A Nothing that I can recall, sir.

Q How long did you speak to him this first time, this February 28th time?

A Ten, fifteen minutes.

Q How much in union dues had been taken out up to that time?

A Of my salary, $24.

Q You heard there was an initiation fee of $24, is that your testimony?

A Correct.

Q How much was he asking for?

A Sixty-five.

Q What did you do after you spoke to him?

A I went back in to the dining room and continued to finish my work.

Q You testified that you were discharged on March the 3rd; is that correct?

A That's right, sir.

Q Could you describe the events leading up to your discharge on that day?

A Well, I went in the morning at 7:30. I worked until 10:30. Had my break. Then I went back, worked lunch, completed my job, and I was going on my break.

Q Before I get into my next question, do you know if Mr. Fineguerra talked to anybody else on February 28th, except you and Billy Cleary?

A He talked to Maria Lopez.

Q How do you know that?

A Because she was called over the loud speaker to come to the telephone operator's desk.

MR. REICH: I don't understand whether the witness saw this or this is a conclusion on her part.

Q Did you hear the -- her name over the loud speaker?

A Yes, sir.

Q Where --

MR. REICH: Your Honor --

Q Did you see her at the front desk?

A Yes, sir, I did.

Q How far away from her were you when you were at the front desk seeing her?

returned to you?

A I was as close to her as I am to the court stenographer here.

Q Did you hear anything being said?

A Yes.

Q Would you tell us the best you remember?

A She was asked also -- I can't remember the amount she was asked to pay. But I think it was $77, but I'm not sure. But she said I'm sorry, I can't afford that, and I don't owe it to you. And she looked at me and she said, Kay, what should I do? And I said just what you're doing.

Q All right.

A So Mr. Pinegueira --

Q Was anything else said when you were there?

A Mr. Pinegueira asked her to sign a paper and she refused to sign a paper. She said she did not owe him any money.

Q You were talking about March the 3rd, and I directed your attention back.

Would you tell us what happened on March 3rd?

A Well, as I said before, I completed my breakfast and lunch. I was going on my break at 2:30 in the afternoon.

Q Did you hear anything or do anything before you went on your break?

A Well, I heard names being called over the loud speaker.

Q What time of day was this?

A Quarter after two, two-thirty.

Q Do you recall which names you heard?

A Mary Abernathy, Joan Gruenke.

Q Did anything happen after you heard these names?

JUDGE SARRICA: Had you completed your answer?

THE WITNESS: Billy Cleary. Now it's completed.

MR. REICH: I didn't get that last one.

THE WITNESS: Billy Cleary.

Q Perhaps if you might take your hands away from your mouth we might hear a little better. Thank you.

Can you tell us what happened after you heard those names?

A Well, as I say, I was in the dining room. And Billy come in, and he said that he was fired.

Q Did you say anything or do anything?

A I said who fired you? And he says, well, I just come from Mr. Hagler's office and there's a union delegate, Mr. Henry Fineguerra in the office with him and they fired me.

Q What did you do?

A I went back.

Q Where did you go?

A Back to Mr. Hagler's office with Bill.

Q Had you been there before?

A Not that day.

Q You went to Mr. Hagler's office?

A Right. I went to Mr. Hagler's office.

Q Who was present when you arrived?

A Mr. Fineguerra, Mr. Hagler, Mary Abernathy, Joan Gruenke, Billy Cleary, Maria Lapaz and myself.

Q Was Mr. Hagler there?

A Yes, sir.

Q Did Mr. Hagler say anything at this time while you were in his office?

A Yes, sir.

Q What did he say to you?

A Well, he said that -- showed us a letter from the union --

Q You saw the letter?

A It was either from the union or his attorney, I don't know which. I'm not sure on that.

Q Do you recall what the letter said?

A Well, I didn't read the letter, sir. I just took Mr. Hagler's word.

Q What did Mr. Hagler say?

A Mr. Hagler said that he was sorry, but he had to fire all of us, discharge all of us because the union told him to do so.

Q Did he say anything else about why he was discharging you?

A No.

He said our work -- we were all good workers and he was sorry to have to do this, but the union told him that he must discharge us.

Q Did Mr. Fineguerra say anything?

A There was an argument --

Q Did Mr. Fineguerra say anything?

A Yes.

He said that his name was on the letter, and I asked Mr. Hagler to see the letter, I wanted to see -- I had asked Mr. Fineguerra for identification, from Local 4, if he had any identification of any kind on his person for Local 4.

And he looked in his pockets and he had no identification. But he did have the letterhead that was on that letter.

Q So you do remember that it was a letter from Local 4?

A Yes, it was, because his name was on that letterhead.

Q Was anything said concerning dues or money of any kind?

A If there was, I was upset, and I can't remember that.

Q Did Mr. Hagler say that you were discharged?

A Yes, sir.

Q Can you recall anything else that occurred at the meeting?

A No, I can't, sir.

Q Were you asked to sign anything for Local 4 at this

time?

A No, sir.

Q What did you do after you were told you were fired?

A Well, I asked Mr. Hagler for a slip -- statement signed by him that I could give to the Unemployment Insurance Office.

Q Was anything else said?

A He refused. Then he told me to go back to my duties or if -- was I refusing not to go back to work.

Q What did you say?

A I said no, sir, I will clock in. You wish me to clock in, I will clock in and go back to work.

Q Did you go back to work?

A Yes, sir, I did, sir.

Q How long did you stay there?

A I stayed there until 7:30 that evening.

Q Then you clocked out?

A Yes, sir.

Q You never reported there again, did for work?

A No, sir.

MR. EISENBERG: I have nothing further.

MR. SCHWARTZ: May I have a copy of the affidavit?

(Mr. Eisenberg handing document to Mr. Reich and Mr. Schwartz.)

JUDGE SARRICA: Shall we now break for lunch.

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AFTERNOON SESSION

JUDGE SARRICA: On the record.

Are you prepared, Mr. Schwartz, to proceed with cross-examination?

MR. SCHWARTZ: Yes, ma'am.

JUDGE SARRICA: Thank you.

CROSS-EXAMINATION

BY MR. SCHWARTZ:

Q Now, Mrs. Curry, you say you had a conversation with Judy Hagler, an interview, is that right?

A Yes, sir.

Q She told you to come back and see Mr. Hagler after the Jewish Holidays; is that right?

A Yes, sir.

Q And when you came back after the Jewish Holidays, he interviewed you; did he not?

A Yes, sir.

Q He asked you a lot of questions; right?

A Right.

Q Where you worked?

A Yes, sir.

Q Where were you working at the time he interviewed you?

MR. EISENBERG: Objection.

A Mount Eden Nursing Home.

A In the dining room.

Q And besides yourself, who else was present?

A The girl who was asking -- who she was asking, who Mrs. Hagler was asking.

Q What did Mrs. Hagler ask?

A Just that she should come in at this certain time.

Q Do you know whether Mr. Hagler instructed her to do this?

A No, that I don't know, sir.

Q Isn't it true that Mr. Hagler would give instructions to many different people?

A Yes, sir.

Q Including yourself?

A Yes, sir.

Q And including Judy Hagler?

A Yes, sir.

Q I think you testified that you were elected shop steward?

A Yes, sir.

Q When were you elected shop steward?

A The early part of November, 1974.

Q And isn't it true that at the time of your hire Mr. Hagler explained to you that there were two unions trying to get in here, and there is a union in there by the name of Local 4?

A No one knew what the outcome of it was, sir.

A Yes.

Q And he explained to you that he didn't care which union got in?

A No.

He did not say that.

Q He didn't say that to you?

A No, sir.

Q And he didn't say to you that you could join or not join a union?

Did he tell you that?

A No, sir.

Q He did not.

A No.

Q But he did tell you that there were two unions involved.

A No, sir.

Q He mentioned nothing?

A Not two unions.

Q He told you there was one union?

A One union.

Q And did he mention the name of the union?

A May I answer that with an explanation?

JUDGE SARRICA: Yes or no, did he tell you the name of the union?

THE WITNESS: No.

Q Did he tell you that the union -- there was a contract,

the house had a contract with the union?

A He told me the house had a contract with the union.

Q And that after thirty days you would have to become a member of the union?

A I would automatically become a member of the union.

Q And did he tell you that you would have to pay dues?

A Yes, sir.

Q And you knew that you had to pay dues?

A Yes, sir.

Q And this was all explained to you before you were hired?

A Yes, sir.

Q Is that right?

A Yes.

Q Did you ask him how much dues you would have to pay?

A No.

Q Did you ask him whether there was going to be initiation fee that you had to pay?

A No.

Q Did he mention whether there was going to be an initiation fee?

A No.

Q And then you became shop steward?

A Yes, sir.

Q And who was the shop steward prior to your accepting

the nomination?

A Evelyn O'Connor.

Q And was she the only shop steward that you knew?

A Yes, sir.

Q Was she elected by the membership; to your knowledge?

A I have no idea, sir.

Q Did you ever ask anybody?

A No.

Q And at that time, when you were elected shop steward, you knew there was a union?

A Yes, sir.

Q And you knew the union would be Local 4?

A Yes, sir.

Q And you knew the union had a contract with the company?

A Yes, sir.

Q And you knew the contract was for the term of three years?

A Yes, sir.

Q Right.

And you knew you had to pay union dues?

A Yes, sir.

Q But you did not know you had to pay initiation dues; is that your testimony?

A I did not -- Mr. Hagler did not tell me that I had to pay initiation fees.

Q Sometime later you found out?

A I knew, sir, you had to pay union dues. I belonged to another union years back.

Q And did you pay an initiation fee at that time when you belonged --

A Yes, sir.

Q And you assumed that this was the same situation here?

A Absolutely, sir.

Q Anybody tell you that you're going to have to pay initiation fees?

A No.

Q Did you inquire from anybody what the initiation fee was going to be?

A Yes.

Q Who did you ask?

A I asked Evelyn O'Connor to see a business representative from Local 4.

Q Pardon me?

A I asked Evelyn O'Connor that I would like to see a business agent from Local 4.

Q I didn't ask you who you'd like to see, I asked you who you asked concerning the application -- initiation fee?

Did you ask anyone as to how much the initiation fee was going to be?

A No.

Q Did you ask anyone as to what the dues were going to be?

A No.

Q You knew, did you not, that you had to sign an authorization card before anybody could deduct dues from your wages?

A Yes, sir.

Q And you knew that upon the day that you were hired?

A Yes, sir.

Q And you had not signed such authorization card?

A No, sir.

Q So that when the money was returned to you by Mr. Hagler, you knew at that time that this was dues being returned because nobody had authorized a deduction from your wages any union dues; is that right?

A May I answer that with an explantion?

JUDGE SARRICA: Did you know that, can you answer it yes or no?

THE WITNESS: I can't. I have to explain it.

JUDGE SARRICA: All right.

Let me hear your answer.

THE WITNESS: It goes back to the first time that six dollars was removed from my pay enevelope.

JUDGE SARRICA: All right. Just that part.

Q So from the first time that six dollars was deducted

you knew at that time that thededuction was improper because you had not signed an authorization card?

A Right.

Q So that when the money was ultimately returned to you you knew that that was the reason the money was being returned; is that right?

A No, sir.

Q You had no idea why the money was being returned to you?

A No, sir.

Q Did you ask anyone?

A Yes, I did, sir.

Q Did they tell you?

A Yes, they did.

Q So you knew at that time that that was the reason why the money was being returned?

A No, sir. I still didn't.

Q You asked why the money was being returned, it was told to you, was that your answer?

A No, that's not my answer, sir.

MR. SCHWARTZ: May I have the question and answer read previously.

(Whereupon, the reporter read back the last answer and question.)

BY MR. SCHWARTZ:

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Q Who told you?

A Mr. Gulino.

Q So you knew that was why the money was being returned?

A I asked Mr. Gulino, Mr. Schwartz. May I carry on, Your Honor?

JUDGE SARRICA: Did Mr. Gulino tell you why the money was being returned?

THE WITNESS: No.

Q He didn't tell you, is that your answer?

A That's my answer.

Q He refused to tell you why?

A He didn't tell me.

Q Did you ask Mr. Hagler?

A No.

Q When you got this -- when you had this conversation with Mr. Gulino, can you recall the period of time?

A It was at the first union meeting that we had in November.

Q And that was after the money was returned to you;' is that your answer?

A No. It was not.

Q That was before the money was returned to you?

A Yes, sir.

Q I asked you after the money was returned to you, at that time, you knew the reason why that money was being

A Right

returned to you?

JUDGE SARRICA: Did you know, yes or no?

THE WITNESS: Yes.

Q Now, you testified that there was a period on some occasion Mr. Hagler asked you whether you were going to vote for Local Number 4, do you recall that?

A Yes, sir.

Q Can you fix the date that that occurred?

A No, I can't sir.

Q You testified this was --

A I know it was before the election.

Q Before the election.

I think you testified that the election was held on October the 11th?

A Yes, sir.

Q Now, I want you to think very carefully. Your testimony was that Mr. Hagler told you he wanted you to vote for Local Number 4; is that correct?

A Yes, sir.

Q He did not want you to vote for Local 1115; is that your testimony?

A That's correct, sir.

Q I see.

So this was an election -- what did you understand this election --this was between Local 4 and Local 1115, and

you were going to vote for either one?

A Correct, sir.

Q And you voted in that election; did you not?

A Yes, sir, I did.

Q I assume you voted for Local 1115?

A I did, sir.

Q And you're positive about this conversation that you had with Mr. --

A Absolutely.

Q No question in your mind?

A No doubt.

Q In other words, it's as true as the rest of the testimony you've given us?

A That's right, sir.

Q The first time the six dollars was deducted from your pay enevelope your testimony was that you went to Barbara the bookkeeper, and you asked her what was the six dollars deducted from your pay?

A Yes, sir.

Q You did not know what it was for at that time?

A No.

Q Did you get a pay envelope?

A Yes, sir.

Q Did you look at your pay envelope?

A Yes, sir.

Q What did it say?

A Union dues.

Q So you did know what it was for; is that right?

A Yes, sir.

Q Nevertheless you went to Barbara the bookkeeper knowing that what -- there were six dollars deducted for union dues and you asked her what was the six dollars deducted for?

A That's right, sir.

Q And she didn't tell you anything?

A No.

She sent me to my shop steward.

Q She said go see your shop steward?

A Yes, sir.

Q That's the only thing she told you?

A That's the only thing she told me.

Q And that is as true as the rest of your testimony?

A That's right, sir.

Q Now, wasn't Anne Donnegan active for Local 1115?

A As far as I understand she was, but it was before I worked there.

Q During the period you worked there?

A She wasn't working there.

Q How about Barbara Davis, was she very active for Local 1115?

A Yes.

Q Is Barbara Davis still working at Gloria's Manor; to your knowledge?

A As far as I know she is.

Q Now, when you received the contract between Local 4 and Gloria's Manor, you read it very carefully; did you not?

A Yes, sir.

Q And you had discussions with your friends at Gloria's Manor?

A My co-workers, yes, sir.

Q You speak to Mary Abernathy about it?

A Yes, sir.

Q And who else did you talk to about the contract?

A All my co-workers, everyone that worked there.

Q Including Donald O'Toole?

A Donald O'Toole was not working there.

Q Not working there at that time?

A Right, sir.

Q But you went over the contract with everyone of the people that were working there?

A Yes, sir.

Q And you explained to them the contents?

A Yes, sir.

Q And you knew the term, right?

A Yes, sir.

Q And you knew that it was for three years?

A Yes, sir.

Q And you knew that everybody, and I assume you explained to everybody, that under the contract, had to pay dues?

A Yes, sir.

Q And that this was a condition of employment between the company and the union; right?

JUDGE SARRICA: You're using the phrase there that's a legal phrase.

MR. SCHWARTZ: I'll try to use laymen's language.

JUDGE SARRICA: Thank you.

Q And you knew that there was a clause which required the employees to pay dues and initiation fees?

A To the union, yes, sir.

Q Yes, to the union.

And you knew that if they didn't do this, under the contract, the union had a right to dismiss them; right?

A Yes, sir.

Q And you explained this to your co-workers, did you not, when you went over the contract; is that right?

A No, I didn't explain that. I didn't say anything about it.

Q You didn't tell them that there was a clause in the contract they had to pay dues and initiation fees?

A We all were paying dues. I didn't have to tell them that, sir.

Q So they all knew that under the contract they had to pay dues and initiation fees?

A Correct, sir.

Q And you discussed this with them?

A No, I did not discuss it.

Q You did not.

But they knew about it?

A Yes, sir.

Q Now, you sat down with Mr. Morales, did you, and you showed him the contract of Local 4, did you not?

And you compared it with the one that he showed you?

A No, I did not.

Q You never met with Mr. Morales --

A I met with Mr. Morales --

Q Let me finish the question, please.

You never met with Mr. Morales and showed him a copy of Local 4's union contract?

A No.

Q Did you tell him the terms in Local 4's contract?

Did you tell him what it contained?

A Yes, sir.

Q And he told you inturn what his contract contained?

A That's right, sir.

Q And when there was the first meeting at the Hotel Roger's, did you pay for the meeting room?

A No, sir.

Q Did you speak to the hotel mangement?

A Yes, sir.

Q You did.

And you arranged for the room yourself?

A Yes, sir.

Q But you didn't pay for it?

A No, sir.

Q Who paid for it?

A Nobody did.

Q They gave the room to you free?

A Yes, sir.

Q When did the first meeting at the Hotel Roger's take place with representatives of Local 1115?

A The latter part of November or early December. I can't remember the exact --

Q Latter part of November or early part of December?

A Yes.

Q This was after the election; right?

A That's right, sir.

Q What happened in theelection?

You voted for Local 1115; is that right?

A Correct, sir.

Q What happened?

Did they --

A No one knew what the outcome of it was, sir.

Q Nobody knew.

A Not until January.

Q And there were five people that were present at this meeting?

A Yes, sir.

Q Was there anybody else other than you speaking to the employees about coming to the meeting?

A No, sir.

It was I who told them.

Q You told everyone of them?

A Yes, sir.

Q Did you call them on the telephone?

A I called them on the telephone or I spoke to them at Gloria's Manor.

Q How many did you call on your telephone?

A Three, four on their day off they weren't in.

Q Did you meet any of them in the street and speak to them?

A No.

Q Well, do they all work the same shift that you did?

A A lot, yes.

Q How many didn't?

A Well, as I say, the four that I telephoned.

Q Only those four?

A I'll say that.

Q Who was the four?

A I can't remember now names, sir, when this happened. This is a while ago.

Q You testified previously that you gave a date of November 26th, as I see it here and October the 11th. YOu remember those dates. And you don't recall --

A I can't remember them all, sir.

Q You don't recall --

A I don't remember them all, sir.

Q I'm not asking for all.

Can you tell me who were the four people that you contacted by telephone?

A Barbara Davis.

Q You can remember.

A That's one I can remember.

Q Who else?

A Marilyn Slatery. That's about all I can remember, sir.

Q And some others you spoke to on the job you testified?

A That's correct, sir.

Q During working hours?

A On their breaks or during lunch hour.

Q You know that without hesitation?

A Yes, sir.

Q And it couldn't have been during working hours?

A No, sir.

No one had the time during working hours.

Q And you told them about a meeting?

A That's right.

Q How many people did you tell all together?

A All of them, sir.

Q How many is all, five?

A I think we had twenty or twenty-one employees.

Q And only five came?

A Correct, sir.

Q Did you take the contract with you to the meeting?

A No, sir.

Q You didn't have it with you?

A No, sir.

Q Did any of the employees ask you about any of the terms of the contract at the meeting?

A Yes, sir.

Q And you told them what the terms were?

A Yes, sir.

Q But you didn't have the contract with you that day?

A No, sir.

Q You testified that the following day -- do you -- you know this was sometime in November or early December, the meeting; is that right, this first meeting?

A Yes, sir.

Q And Mr. Hagler then had a conversation with you. Can you fix the date when this took place?

A That was before that meeting.

Q Oh, he spoke to you before this meeting?

A Yes.

MR. EISENBERG: I can't really hear the witness' response. Perhaps she could be instructed --

JUDGE SARRICA: Yes.

Could you speak louder and keep your hands away from your mouth.

Q Now, you testified that Mr. Hagler spoke to you before the meeting?

A Yes, sir.

Q What did he say to you?

A Well, it was pertaining to a petition.

Q I asked you what he said to you?

A Mr. Hagler said -- promised me that if I had -- no, I'm wrong.

Mr. Hagler promised that he would ask his attorneys if he could add provisions to the old contract or make out a new contract with better provisions in the contract for all the workers of Gloria's Manor.

Q Where did this conversation take place?

A Mr. Hagler's office.

Q He called you in his office?

A No, he didn't call me in his office. I went to his office.

Q Oh, you went to his office?

A Yes.

Q You went to his office, and he told you that he was going to contact his attorneys?

A Yes.

We were talking terms about the contract.

Q Did you have the contract with you then?

A I can't remember if I had it then on my person, sir. I might have, but I can't remember.

Q He told you that he would call his attorney?

A Right.

Q And this was before the meeting at the Hotel Roger's?

A Yes, sir.

Q Was this the only meeting you had with him?

A With who?

Q Mr. Hagler.

A No.

I spoke to Mr. Hagler several times, sir.

Q When was the next time you spoke with Mr. Hagler?

A Next time I spoke to Mr. Hagler, Mr. Gulino was in the room with us. Also in Mr. Hagler's office.

Q What was this conversation about?

A Same thing.

Q About the contract?

A Yes.

Q When was the very next time you had a conversation with Mr. Hagler?

By the way, what is the date --

A I can't remember dates, sir, sorry.

Q Well, November December was the meeting, and this had to be after, so this had to be sometime in December, late December; is that right?

A Right.

Q So you had a second meeting, with Mr. Hagler in late December?

A Right.

Q After 1974?

A Correct, sir.

Q In which Mr. Gulino was present?

A Right, sir.

Q And again they were talking about the contract?

A Right, sir.

Q About changing or modifying the contract; is that right?

A Yes, sir.

Q And when was the next meeting that you had with Mr. Hagler?

A Well, it was to be within five days. But it never took place.

Q And these were the only two meetings that you had with Mr. Hagler; is that correct?

A Yes, sir.

Q No other meetings?

A No, sir.

Q Is that right?

A Yes, sir.

Q Was there any period of time that you were out from work?

A Yes, sir.

Q When was this?

A When my brother died.

Q When was this?

A December the 23rd, he died. I took off three days before that, and then that would be December 20th -- I took off a week from December the 20th. I believe that's correct.

Q If I tell you that you were out two weeks, would that refresh your recollection?

A If you say so, sir.

Q I don't want you to say anything that you don't believe.

A Well, at that time I can't argue the point, sir, because at that time I don't remember.

Q All right.

A Right.

Because I previously belonged to a union.

Q What did you discuss with him about the dues?

A Nothing.

Just told him that they removed six dollars from my pay, but I wasn't asking him anything. I was telling him.

Q Oh, I see.

Now, the Friday, the 28th of February, was that a Friday?

A I can't recall, sir. If you say so, yes.

Q Well, March the 3rd you were discharged?

A That was a Monday.

Q Right.

A Yes, Friday --

Q Friday prior --

A Correct, sir.

Q Whatever the date might be, it might have been the 28th, I think it was, you had a conversation with Mr. Hagler, did you not, about the union dues?

A No.

That wasn't on the 28th. That was the 24th.

Q Twenty-four was it?

A Yes, sir.

Q Did he tell you that the union was -- told him that they wanted him to fire you and other employees because you

had failed to pay the dues?

A Not on the 24th.

Q The 28th?

A No.

It wasn't on the 28th either. It was on March the 3rd.

Q That was the only conversation that you had with Mr. Hagler about the dues?

A Yes.

JUDGE SARRICA: I'm going to ask you to answer with words and drop your hand.

THE WITNESS: Sorry.

Q Now, on March the 3rd -- I'll ask you one more time -- withdraw that.

I'll ask you one more time, prior to March 3rd, did Mr. Hagler ever speak to you telling you that the union had demanded your discharge for non-payment of dues?

A Yes, he did.

Q When he told you this, did you say anything to him in return?

A I believe I said I was a good member of the union in good standing, and that I had paid my union dues. It was --

Q But you --

A May I finish?

Q Yes. Sure.

A I said Mr. Hagler, you yourself personally saw and

removed six dollars from my pay envelope every month.

Q But you and I know, Mrs. Curry, that at the time you made this statement, you in fact had received your dues back from Mr. Hagler; had you not?

A Yes, I received my dues back.

Q So in fact you were not a member in good standing at that time; were you?

A Oh, yes, I was, sir.

Q Now, when you got off your job that evening, did you not call Mr. Morales to tell him what Mr. Hagler told you?

A What day are you referring to --

Q Same day?

A What day was that, sir?

Q You tell me. You are the one that had the conversation with Mr. Hagler.

A Are you referring to the day I was fired, sir?

Q Well --

A Can you refresh my memory. I can't remember the day you are talking about.

Q I don't know. But whatever the day it might have been, did you in fact call Mr. Morales?

A No.

I called Mr. Morales -- I did not call Mr. Morales on that day.

Q Was it the following day?

A No.

Q At any time thereafter did you call Mr. Morales?

A Yes.

Q Did you explain to him what happened?

A I explained to him that I was fired, yes.

Q Oh, this was after you were fired?

A Right.

Q And did he tell you that the company could fire you for non-payment of dues?

A No, he didn't say that, sir.

Q He didn't tell you that.

A No.

Q I think that you went around and were obtaining signature cards for Local 1115.

Was this the same time you were shop steward for Local 4?

A Yes, sir.

Q During the time you distributed the cards for Local 1115 to the other employees Mr. Hagler did not see you distribute these cards; did he?

A No.

Q Now, on the day that you were discharged, I think you testified that Mr. Hagler had a letter in his hand from Local 4?

A I believe it was from Local 4. I wasn't sure if it

was the attorney or Local 4.

Q Did you ask to read the letter?

A I did.

Q Did you read it?

A Oh, I did not read the letter, sir. All I wanted was the letterhead on it --

Q Was the letter handed to you?

A Yes, sir.

Q So that if you wanted to read it, you could have?

A It was pulled right out of my hand, sir.

Q It was pulled out of your hand?

A Yes, sir.

Q Who pulled it out of your hand?

A Mr. Hagler.

Q Did he hand you the letter?

A He handed me the letter, but he was holding on to it, but I happened to take it, and I was holding it up, and I was writing the -- what was on the top of the letter. Mr. Hagler come around from the desk, pulled it away from me and said that is my property.

Q He said that was his property?

A That's correct, sir.

Q Did he tell you the contents of the letter?

A No. And I didn't read the letter.

Q Did you ask him to read it?

A No. I wasn't interested.

Q But he did tell you, did he not, that he received a letter from the union which in substance stated that you and four others failed to pay the union dues, and that the union therefore was requesting him to discharge you people pursuant to the terms of the contract?

A That's correct, sir.

Q And he also said to you and the others that so far as he was concerned he did not want to do this?

A Correct, sir.

Q That you were all good workers, and he would like you to stay on; is that right?

A Well, he didn't say he would like us to stay on. He just said that we were all good workers.

Q And he didn't want to do this?

A Yes. He said that.

Q At this point did anybody offer to pay the dues?

A No.

We weren't asked to pay dues at that point.

Q I didn't -- I asked you if anybody offered to pay?

A No one offered.

Q And you knew, at least you knew, that so far as you were concerned you had not paid any dues since the day of your employment?

A May I answer that with an explanation, YOur Honor?

Q Just please answer yes or no.

JUDGE SARRICA: I will allow the witness to answer in her own words.

A From the first day that the union dues were removed from my pay I was automatically a Local 4 union member, automatically. And I had paid my dues for the month of February. It would have to go to the first week in March on a Friday for me to be a bad -- a member in bad standing for not paying my union dues.

And the only reason why I didn't pay them on that day was that I wasn't there to pay them. But I paid my union dues every month. I didn't pay it, it was taken out automatically of my salary.

Q When did you receive the check for the payment of the union dues from Mr. Hagler?

A I received a check from Mr. Hagler for union dues which I did not ask back for from February 24th.

Q From February 24th to March the 3rd, you had not paid or offered to pay any union dues; is that correct?

A Right, sir.

Q And isn't it true, Mrs. Curry, that you didn't want to pay any union dues because you didn't like the benefits of Local 4's contract?

MR. EISENBERG: Objection.

JUDGE SARRICA: Sustained.

MR. SCHWARTZ: I may not be permitted to ask her that's the reason she didn't want to pay the dues?

JUDGE SARRICA: Right.

BY MR. SCHWARTZ:

Q Did you tell anyone that you weren't going to pay the dues because you did not like the terms of Local 4's contract?

A Never.

Q You told no one?

A No one.

Q Did Mr. Hagler know why the union wanted to discharge you?

A Yes.

Q Do you recall testifying before the State Department of Labor on April the 25th, 1975?

A I testified, sir, But I don't recall anything I testified on that day.

Q Well, let me see if I can refresh your recollection.

A All right. I'll try.

MR. EISNEBERG: Your Honor, before counsel wishes to use that document, could it be established as to whether or not the witness was under oath.

MR. SCHWARTZ: Certainly. Would that make any testimony in her testimony, counsel?

MR. EISENBERG: Depends what you want to use it for.

MR. SCHWARTZ: I said would that make any difference in her testimony?

I'm reading from page --

MR. EISENBERG: Ask her if she was sworn in.

BY MR. SCHWARTZ:

Q Do you remember whether you were sworn in?

A Yes, I was.

Q Do you remember that.

Question --

JUDGE SABRICA: Don't read it in the record. Ask her.

MR. SCHWARTZ: I think he was able to read it in the record --

JUDGE SABRICA: He phrased it within a question.

Q Were you asked at the hearing the following question, question, "Weren't you at any time ever todl by anybody that you were being fired because you refused to sign these authorization cards, and refused tojoin the union.

Answer, In the five months I was there I was never handed an authorization card to sign, but they removed the union dues from my pay, and I have proof that I was a good union member even to the day I was fired.

Question, Let me go over this onece again. At the time Mr. Hagler spoke to you you say that he told you that he was -- that you were being discharged at the union's request.

Answer. Right.

Question. And did he tell you why the union wanted you to -- you terminated.

Answer. He didn't know."

Do you recall saying that?

A Who didn't know?

Q Mr. Hagler didn't know, according to your testimony.

Is that correct?

Was this the statement that you made --

A Yes, I made that statement, sir.

Q And was it true at the time you made it?

A Yes, sir.

JUDGE SARRICA: Is that did not comma, N-O or is it D-I-D , N-O-T , K-N-O-W .

MR. REICH: K-N-O-W .

JUDGE SARRICA: Is it verified that that was her testimony or is that the transcript that was given.

MR. SCHWARTZ: She just testified that's what she said and that's in the testimony.

JUDGE SARRICA: You did say that he did not know?

THE WITNESS: That's what's in there because I was there that day.

Q Here, is that what you said?

A Yes.

Q Did you ever tell any representative from Local 4

Q And was it true at the time it was given?

A Yes.

Q So that Mr. Fineguerra did ask you in fact that the reason that you refused to sign -- pay the dues because you were not getting the benefits of Local 4 -- benefits that you wanted in Local 4's contract; is that true?

A No.

He wanted me to sign a petition that he had, and I did not know what was on that petition. I didn't readt it.

Q I'm not asking you about a petition. I'm asking you whether you were paid the dues if the benefits contained in the Local 4's contract were similar to those of the Local 1115's contract?

JUDGE SARRICA: I'm sorry, that isn't the question.

Q Ifthe benefits in Local 4 were those that you desired --

JUDGE SARRICA: The question was, did you tell Mr. Fineguerra that?

THE WITNESS: No, I did not.

Q You did not tell him?

A No.

May I make an explanation?

JUDGE SARRICA: No.

MR. SCHWARTZ: I have no further questions.

MR. REICH: May I, Your Honor?

JUDGE SARRICA: You may.

P R O C E E D I N G S

JUDGE SARRICA: Let's go on the record.

This is a resumption of the hearing in the case of Gloria's Manor Home for Adults, Case Number 29-CA-4050 and CB-2065, consolidated, the hearing of which opened July 29, 1975, and adjourned on August 1 to this date.

At the close of the last hearing date the General Counsel was about to proceed with the next witness.

Are you prepared to call your witness?

MR. EISENBERG: I am.

JUDGE SARRICA: Please do so.

MR. EISENBERG: General Counsel calls William Cleary, whereupon,

WILLIAM CLEARY

called as a witness, first being duly sworn, was examined and testified as follows:

JUDGE SARRICA: State your name?

THE WITNESS: William Cleary, C-L-E-A-R-Y .

DIRECT EXAMINATION

BY MR. EISENBERG:

Q Mr. Cleary, would you state your address for the record, please?

A 321 Beach 47th Street, Far Rockaway, New York 10691

Q Did you work for Gloria's Manor?

A Yes.

Q Can you tell us when you were hired?

A June '74.

Q Did you work continuously for Gloria's Manor from the date you were hired?

A No.

Q Can you tell us your employment history relating to the time you were first hired?

A Well, I started working, then I got laid off.

Q About how long were you working?

A Two or three days, I think.

Q Did you resume work at some future time?

A Yes.

Q When was that?

A July.

Q Is that 1974?

A Yes.

Q Did there come a time when you were discharged?

A Yes.

Q Would you tell us when that was?

A March 3rd, 1975.

Q What was your job?

A I was a dish washer, a cooks helper and bus boy.

Q And where did you work?

A In the kitchen and dining room.

Q How many days a week did you work?

A Five.

Q Could you tell us what days of the week you normally worked?

A Monday to Friday.

Q How many hours a day did you work on the average?

A Between eight and twelve.

Q What was your wage when you first started employment?

A Two fifty.

Q What was your wage when you last worked for Gloria's?

A Two dollars and seventy-five cents.

Q Who were your bosses?

A Mr. Hagler, Mrs. Hagler, Mrs. Weisbloom, Helen Hagler ---

MR. REICH: I move to strike the answer and object to the question as calling for a conclusion unless it's stipulated the term boss is not being used in the sense dealing with supervisory capacity under the Act.

JUDGE SARRICA: Other than the stipulation supervisory capacity, we'll have some proof on that, so I will allow the answer to stand.

Q When you said Mrs. Hagler, who are you referring to?

A Judy Hagler.

Q Was she any relation to Mr. Hagler?

A Yes. His wife.

Q What is that?

A His wife.

A Yes.

MR. EISENBERG: At this time, Your Honor, I'd like to ask for the production of membership cards as subpoenaed from Local 4?

MR. REICH: I don't know that I have any, but I think counsel already had been informed that we have no card from this witness and never had one.

MR. EISENBERG: Will those cards, Mr. Reich, be made available, membership cards I subpoenaed for all the employees as requested in the subpoena.

MR. REICH: Those card -- you're talking membership cards or dues records?

MR. EISENBERG: Membership cards.

MR. REICH: Membership cards I don't believe are material. They're not in the hearing room because, I believe, Mr. Fineguerra had them with him. When he shows up he'll probably have them with him too. But in any event, I would object to producing them. They're immaterial to theissues here. This should not be a fishing expedition conducted at this time.

JUDGE SARRICA: He's represented on the record that they're not presently in the hearing room.

BY MR. EISENBERG:

Q When did you sign a document for Local 4?

A I think the first day I started working there or a

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couple of days after.

Q Was this when you were first hired or after you resumed work at a later date in July?

A I think after when I came back.

Q Did someone give you the card?

A Yes.

Q Who was that?

A Switchboard operator.

Q Wherewere you when you were handed the card?

A Right by the front desk.

Q Do you know the name of theswitchboard operator?

A No.

Q Did the switchboard operator say anything to you once she handed you the card?

MR. REICH: Objected to.

This is a conversation not only between two people, neither of whom are connected with the Respondent but also one of whom is mysterious and unknown.

JUDGE SARRICA: Overruled.

MR. REICH: He doesn't know who the switchboard operator is, he said.

JUDGE SARRICA: Overruled.

MR. REICH: Exception.

THE WITNESS: Can you repeat the question.

MR. EISENBERG: Could you please repeat the question.

(Whereupon, the reporter read back the last question.)

A She said --

MR. SCHWARTZ: I'm going to object to this. We don't even know what we're talking about here -- card, a piece of paper, a document. There's nobody -- nothing has been identified. We don't know who -- whether that person is employed by the company, whether it's part of management, whether it's an official -- whether that person is an official of the union.

JUDGE SARRICA: We'll find that out through testimony, I assume. If we don't, that's part of the General Counsel's problem. But I will overrule your objection.

MR. SCHWARTZ: I assume I would have the opportunity to move to strike if he doesn't connect it?

JUDGE SARRICA: Obviously.

MR. SCHWARTZ: To any of these items that I mentioned?

JUDGE SARRICA: Obviously.

MR. SCHWARTZ: Okay.

JUDGE SARRICA: Please proceed.

MR. EISENBERG: Thank you.

BY MR. EISENBERG:

A She told me that Local 4 was the union that was in, and everyone was signing for it, so I signed.

Q Is the switchboard operator an employee?

A Yes.

Q Of Gloria's?

A Yes.

Q Can you describe the document that was handed to you?

A It was a membership card.

Q Do you know the color --

MR. REICH: I move to strike that as not responsive and calling for a conclusion. He's been asked to describe something and saying it's a membership card is a conclusion on his part. A description to me would indicate size, color, shape, weight, content.

JUDGE SARRICA: I'll let the answer stand.

You will continue --

BY MR. EISENBERG:

Q Can you describe what the card looked like?

A It was a white card with I think blue lettering on it. I'm not positive.

Q Do you remember what it said?

A No.

Q Did you affix your signature to the document that was given to you?

A Yes.

Q What did you do with the card after you signed it?

A I gave it back to the switchboard operator.

Q Was anybody with you at this time?

A Donald O'Toole.

Q Did he say anything to you about Local 4 or about th

card?

A He said that was the union that was in.

Q Do you know if this card said anything about dues check off?

MR. REICH: Objected to as leading, and the witness has testified he doesn't know what the card said.

JUDGE SARRICA: Sustained.

MR. EISENBERG: Mr. Reich, Mr. Schwartz, I'll again offer to stipulate that dues were deducted from Mr. Cleary's pay, at least an amount of six dollars was deducted from Mr. Cleary's pay on October the 9th --

MR. REICH: If you're offering a stipulation because the witness can't give you the evidence, that's one thing. But if the witness can give it to you let's get it first hand rather than from you, sir, and if you're offering it only to jog the witness' memory, then I would object to that procedure.

MR. EISENBERG: I'm not offering it for that purpose at all. We entered into a stipulation last time. I can reasonably adduce certain testimony.

JUDGE SARRICA: You decline to stipulate on the payroll records --

MR. EISENBERG: Excuse me?

JUDGE SARRICA: Can the parties stipulate from the payroll records subpoenaed what deductions were in it.

MR. EISENBERG: I'll be willing to stipulate

MR.REICH: I'd first like -- I have no objection to stipulating to the facts. But we have a witness here. You may be called upon sometime to make a determination with respect to his memory, credibility, et cetera. I'd first like to see what his memory is on this matter.

If he remembers fine, then we can get it without wasting time. If he doesn't remember, then that's the time to discuss stipulation.

JUDGE SARRICA: You have his answer?

MR. EISENBERG: I askthat these documents, if that's the way to describe it, be marked for identification as General Counsel's Exhibit 12-A through E.

(The referred documents were marked General Counsel Exhibits Nos 12-A through E for identification, as of this date.)

MR. REICH: Off the record.

JUDGE SARRICA: Off the record.

(Discussion off the record.)

JUDGE SARRICA: Back on the record.

MR. REICH: Are you offering them?

MR. EISENBERG: As a courtesy.

BY MR. EISENBERG:

Q Mr. Cleary, did there come a time when you noticed an amount deducted from your pay which had not been deducted

previously?

A Yes.

Q Can you tell us what this first time was?

A In October.

Q Would you tell us what you noticed?

A That there was six dollars deducted from my pay for union dues.

Q How did you notice this?

A It was on the pay stub.

Q I show you General Counsel's Exhibit 12 for identification. Can you tell us what A through E are?

(Handing documents to witness.)

A All my pay stubs.

Q All of them?

A Well, all the ones that dues were taken out of.

Q Could you tell us what months they represent or dates?

A October, November, December, January, and February.

Q What was this additional deduction?

A Union dues.

Q Were union dues taken out each month?

A From October to February, yes.

Q What was that amount?

A Six dollars.

MR. EISENBERG: I offer it in evidence.

JUDGE SARRICA: Any response?

MR. SCHWARTZ: Yes. The witness testified October, November, December, January, February?

Is that what it is?

MR. EISENBERG: Yes.

MR. SCHWARTZ: I don't see anything for November. I don't see anything for November. Therefore, I object to them, as not being representative of what the witness testified to.

JUDGE SARRICA: Your position, Mr. Reich?

MR. REICH: None.

JUDGE SARRICA: No position?

MR. REICH: No.

JUDGE SARRICA: All right.

The exhibits will be received and they'll speak for themselves as against his testimony.

(The above referred document marked General Counsel's Exhibits Nos. 12-A through D received in evidence, as of this date.)

MR. SCHWARTZ: I assume I have an exception to that ruling?

JUDGE SARRICA: Of course. You have an exception to all advers rulings.

MR. SCHWARTZ: I know that. I'm just talking for the record.

JUDGE SARRICA: All right.

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BY MR. EISENBERG:

Q Were union dues deducted from your pay at any other time?

A No.

Q Did you speak to any one about these dues deductions at any time?

MR. REICH: Objected to.

Time isn't specified and speak to any one, he might have spoken to the cop on the beat.

JUDGE SARRICA: Will you rephrase the question, please.

Q Did you speak to any one about union dues about the time you first noticed that six dollars amount being deducted from your pay?

A Yes.

Q Can you tell us who that was?

A Mrs. Curry.

MR. SCHWARTZ: Who?

A Mrs. Curry.

Q When didyou speak to Mrs. Curry?

A As soon as I saw that dues were being taken out.

Q What did you say to her and what she say to you?

MR. REICH: Objection.

Now we have a conversation between two alleged discriminatees.

MR. SCHWARTZ: Objection.

JUDGE SARRICA: Well, that was the union steward, was it not?

MR. REICH: I don't know if she was at the time or not.

JUDGE SARRICA: I will overrule. I will let the General Counsel develop the connection.

BY MR. EISENBERG:

Q What did you ask Mrs. Curry and what did she say to you?

A I asked her if dues were taken out of her pay check and she said yes. And I said how come they're taking them out and she said she didn't know.

Q Did you speak to any one else?

A Not that I can remember.

MR. REICH: I move to strike the conversation between this witness and Mrs. Curry as being totally irrelevant.

JUDGE SARRICA: Strike it.

Q Did you speak to a bookkeeper about it.

A MR. REICH: Objected to as leading as suggestive.

JUDGE SARRICA: Sustained.

MR. EISENBERG: The witness said he didn't recall.

JUDGE SARRICA: Didn't recall what?

MR. EISENBERG: Who else she spoke to.

MR. SCHWARTZ: I didn't hear any such testimony.

JUDGE SARRICA: Let me hear the preceding question

and answer.

(Whereupon, the reporter read back the last question and answer.)

JUDGE SARRICA: I will change my ruling.

YOu many answer that question.

A Couple of months later I talked to the bookkeeper.

Q Did you say anything to her, and if so, could you tell us what that was?

A I asked her --

MR. SCHWARTZ: Objection.

MR. REICH: Objected to.

This line of examination I thought was with respect to the first deduction. Now the witness has made a statement that a couple of months later he spoke to someone. I don't think --

JUDGE SARRICA: I'm going to allow it, to allow some connection between the bookkeeper and some allegation in the complaint. But I will allow the question for development at this time.

MR. SCHWARTZ: I'd like the record to reflect my objection on the basis that the bookkeeper is neither a representative of the Respondents in this matter -- not an agent, therefore, anything that she might tell him is strictly hearsay and not binding against either Respondnent.

JUDGE SARRICA: Yes.

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I would understand that objection, and I am anticipating that the General Counsel will have to connect the bookkeeper.

MR. SCHWARTZ: Yes, ma'am.

JUDGE SARRICA: As an agent or something. The question stands. It may be answer.

MR. EISENBERG: Thank you.

THE WITNESS: Can you repeat the question.

JUDGE SARRICA: Will you read the question to the witness, please.

MR.REICH: If the question is to be repeated may I respectfully ask thatthe witness at the same time fix a date and place of this conversation?

JUDGE SARRICA: I think he had said something about a couple of months later. We'll allow the General Counsel to develop it.

MR. REICH: I don't mind developing it, but I think the witness ought to tell us what he means by a couple of months. A couple of months might be one thing to you and one thing to me.

JUDGE SARRICA: Let's not interfere with the General Counsel's presentation. You can check it out on cross.

(Whereupon, the reporter read back the last question.)

A I asked her how come union dues were being deducted and she said Mr. Hagler told her to take them out.

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Q Do you know the name of this bookkeeper?

A Barbara Pearlman, I think.

Q Did there ever come a time when you met a Local 4 delegate or representative?

MR. SCHWARTZ: I move to strike that testimony, that he has not connected the bookkeeper as an agent of Respondent.

JUDGE SARRICA: Overruled.

Now, you have a question pending. Did you complete your question?

MR. EISENBERG: Yes.

JUDGE SARRICA: Do you know the question?

THE WITNESS:

I met with Mr.Gulino at Gloria's Manor in the dining room.

Q Can you tell us when the first time you met with Mr. Gulino was?

A I'm not usre. I think NOvember. I'm not sure.

Q Where were you when you met with Mr. Gulino?

A In the dining room of Gloria's Manor.

Q Was anybody else there besides you and Mr. Gulino?

A All the employees.

Q How long was Mr. Gulino in the dining room?

A Half hour, hour.

Q Do you recall what time of day this was?

A No.

Q How did you happen to be in the dining room at that time?

A I was called out of the kitchen.

Q Who called you out of the kitchen?

A One of the employees.

Q Did that employee say anything to you?

MR. SCHWARTZ: Objection.

JUDGE SARRICA: Overruled.

A He said that a delegate from Local 4 was here, and we were having a meeting.

Q Did Mr. Culino say anything at this meeting?

A He was talking about a contract, and the employees were, you know, discussing the contract.

Q Well, can you be specific as to what Mr. Culino said?

A The employees wanted a better contract, and he said he would negotiate with MR. Hageler.

Q Do you remember if Mr. Culino said anything else at this meeting?

A That we didn't have to pay initiation fees.

Q Did he say anything else about initiation fees?

A He said it was $35 and we didn't have to pay because we were just starting off fresh.

Q Did he say anything else about any other union obligation in the way of money?

Did there come a time when you had a conversation with Mr. Hagler during that week?

A Yes.

Q Did you have more than one conversation with him during that week?

A I can't remember.

Q Do you remem-er when during that week you spoke with Mr. Hagler?

A I think it was the 24th or the 25th of February.

Q Wherewere you when you spoke with him?

A In his office.

Q Was anybody else with you in his office when you spoke with him?

A No.

Q How didyou happen to go to Mr. Hagler's office?

A I was called in.

Q Do you recall by who?

A Switchboard operator.

Q Did Mr. Hagler say anything to you when you were in his office?

A Yes.

Q Can you tell us what he said to you and what you said to him, if anything?

A He gave me a check for $30and said it was refund on my union dues, that the union didn't want me in the union

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anymore.

MR. EISENBERG: May I call for the production of those dues refund check copies.

(Pause)

BY MR. EISENBERG:

Q Can you describe the check that he gave you?

A It was a company check, Jo-Jo Management.

Q Do you remember who signed the check?

A Mr. Nagler.

Q Was anything written on the check to indicate what it was?

A On the stub it might have said union dues.

MR. SCHWARTZ: Before you show it to him, let's mark it for identification, and show it to me, please, Your Honor.

MR. EISENBERG: That's what I intended.

MR. SCHWARTZ: Okay.

MR. EISENBERG: I ask that this be marked for identification as General Counsel's 15.

Before we do anything further on that, would it perhaps be in order at this time to do it with all the copies of the documents?

JUDGE SARRICA: I'm afraid I don't understand what you mean by copies of the documents?

MR. EISENBERG: In other words, there are various checks, and there are --

JUDGE SARRICA: May we go off the record and discuss with counsel whether or not you can enter into a stipulation on checks that were made for dues for refunds.

Off the record.

(Discussion off the record.)

JUDGE SARRICA: On the record.

MR. EISENBERG: I offer to stipulate that during the week of February 24th --

MR. REICH: ON February 24.

MR. EISENBERG: On February 24th, if that's the date. They're all dated February 24th.

MR. SCHWARTZ: Why don't you say the parties stipulate, other than you over the stipulation.

MR. EISENBERG: What difference does it make?

Your Honor, it's my understanding that the parties are willing to stipulate that checks representing a refund on union dues signed by Mr.Hagler on February the 24th, 1975, were given to the following employees in the following amounts:

M Abernathy, $30; Kathryn Curry, $24; Wanda Sullivan, $30; Joa Gruenke, $24; and William Cleary, $30.

If I didn't already say it, that these checks were refund on union dues.

MR. REICH: And were cashed by the respective payees.

MR. EISENBERG: And were cashed by --

MR. SCHWARTZ: And were signed by Joseph Hagler as president of Jo-Jo Management Corporation -- Secretary - treasurer.

MR. EISENBERG: Secretary - treasurer.

JUDGE SARRICA: All right.

Stipulation received. Thank you.

MR. EISENBERG: Thank you.

BY MR. EISENBERG:

Q When Mr. Hagler gave you the check and told you what he told you what did you do?

A I just walked away, went back to work.

Q Do you know if any other employees other than Mrs. Curry, Mrs. Gruenke, Mrs. Abernathy and Mrs. Sullivan received dues refund checks besides yourself?

MR. REICH: Objected to.

Obviously calling for hearsay. In addition to which it's utterly immaterial. You can mention all the respondents

JUDGE SARRICA: He did ask him whether he knew, but what is the materiality?

MR. EISENBERG: I'm trying to develop basically a full picture of who got what.

JUDGE SARRICA: Is this for some further evidence you're going to present?

MR. EISENBERG: It will relate to at leadt a person being present in a room wherein people were discharge. I

Your Honor. It can be leading into the subway for all I'm concerned.

JUDGE SARRICA: If it isn't tied in then it's ignored. You're overruled.

BY MR. EISENBERG:

Q Do you recall how long that meeting was?

A Five minutes.

Q During that week, beginning February 24th, did there come a time when you had a contact with a Local 4 delegate?

A Yes.

Q Can you tell us what date that was?

A February the 28th, 1975.

Q How did you happen to get in contact with a Local 4 delegate?

A I was called to the front desk.

Q How were you called to the front desk?

A Loud speaker.

Q When you heard your name on the loud speaker, what did you do?

A I stopped my work and I went up to the front.

Q Did someone approach you?

A Yes.

Q Can you tell us what happened at that time?

A [illegible]

Q [illegible]

A Henry Fineguerra or something like that.

Q Did he talk to you?

A Yes.

Q What didhe say to you and you to him?

A Well, he told me that I owed him $77 for initiation fees, and union dues and I told him that I paid union dues already and he told me that he never received them. I told him that I had the stubs home, and I could prove it. And he just said he never received them.

Q Were you asked to do anything by Mr. Fineguerra?

A He asked me to sign a piece of paper.

Q Did you see the piece of paper?

A Wuickly. I didn't see what was on it.

Q Can you describe the piece of paper?

A Long piece of paper.

Q Did you see any writing on the paper?

A There was writing on it, yes.

Q Do you know what that writing was?

A No.

Q Did Mr. Fineguerra characterize the paper in any way?

A Not that I remember; no.

Q Did he say anything to you about your employment status?

A [illegible]

[illegible] stubs, Mr. Grady, I mean whether you'd

be working or not in any way?

A Well, he said if I didn't sign the paper, and if I didn't pay the dues, that I would be discharged.

Q Did he say anything else about the $77 by way of describing it?

A No.

Q Just $77?

MR. REICH: I move to strike that. That's a characterization of a statement of counsel which is improper to begin with.

JUDGE SARRICA: Sustained.

Q You testified that you were discharged on March the 3rd, 1975; is that correct?

A Yes.

Q Would you tell us the events leading up to your discharge?

A Well, I was in the kitchen at --

Q What time? Fix the time, please, if you can?

A I guess about 1:30, a quarter to two. I was in the kitchen and the cook, his name is Dave something or other, he told me, would you sign for Local 4 if it cost your job and I told him when thetime comes I'll decide. And he told me the time was here, that I was going to be called in to Mr. Hagler's office.

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A Then about 3 o'clock I was called in to his office.

Q How were you called in to his office?

A He came into thekitchen, Mr. Hagler came into the kitchen.

Q What did Mr. Hagler say to you?

A He told me to go to his office.

Q Did you go to his office?

A Yes.

Q When you first arrived in his office, was anybody in his office?

A Yes.

Q Who?

A Henry Fineguerra.

Q Who else was in the office besides yourself?

A Mr. Hagler.

Q Did Mr. Fineguerra or Mr. Hagler say anything to you at this time?

A Well, Mr. fineguerra wanted me to sign that piece of paper and pay those dues, and I told him that I wasn't going to sign.

Q When you say pay these dues, do you remember if Mr. Fineguerra said anything about that?

Do you remember what he said?

JUDGE SARRICA: I will allow it.

MR. REICH: I submit respectfully let him as him if anything further was said.

JUDGE SARRICA: Rephrase it, please.

BY MR. EISENBERG:

Q Was anything further said by Mr. Fineguerra?

A That -- I told him -- he toldme that I owed him the money, initiation fees and dues, and I told him that I paid him already, and he said that he didn't received it. So I said he has to talk to Mr. Hagler about that.

Q Is Mr. Hagler in the office at this time?

A Yes.

Q Did Mr. Hagler say anything?

A Not that I remember, no.

Q Did anybody talk about your employment status, Mr. Fineguerra, or Mr. Hagler?

A If I didn't sign the paper, I'd be fired.

Q Did you say anything other than what you've already testified to?

A Well, I asked Mr. Fineguerra for identification, and he said he didn't have any.

JUDGE SARRICA: Excuse me, what kind of identification?

THE WITNESS: To see if he was a delegate for Local 4.

JUDGE SARRICA: For [illegible]

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THE WITNESS: His identification.

JUDGE SARRICA: I'm sorry, counsel.

BY MR. EISENBERG:

Q Did Mr. Hagler say anything to you about your employment status?

A The same as Mr. Fineguerra.

Q Just Mr. Fineguerra?

A The same as Mr. Fineguerra.

MR. REICH: What isn't what he said.

Q I didn't hear you?

A The same as what Mr. Fineguerra said.

Q I see. I'm sorry.

What did you then do after Mr. Fineguerra and Mr. Hagler spoke to you in the office?

A I left, and I told Mrs. Curry what happened, and she took me back to the office.

Q You arrived at the office again?

A Yes.

Q Who was present in the office when you arrived?

A Joan Gruenke, Mary Abernathy and Maria Lapaz.

Q Anybody else present?

A Mr. Hagler and Mr. Fineguerra.

Q Did Mr. Hagler or Mr. Fineguerra say anything that you can remember [illegible]

A They were saying a lot of things. I don't really

remember. Mr. Hagler and Mr. Fineguerra were saying a lot of things.

Q Was anything said that you can recall?

A Just that if those people didn't, you know -- people I just mentioned, didn't pay, they would be discharged too.

Q Were you told you were discharged at that time?

A Yes.

Q Who told you that?

A Mr. Hagler and Mr. Fineguerra.

Q What did you do after they told you that?

A Well, Mr. Hagler told us to finish our day's work.

Q Did he say all of you finish your day's work? Who did he -- withdrawn.

Who did he tell to finish the day's work? Who is "us"?

A Just me and Kaye because the other girls that were discharged were chambermaids and by the time we were in the office they were finished work already.

Q What did you then do?

A I went back to work.

MR. REICH: One moment, please.

The witness has made a guess -- he may not mean to be guessing. May we have the record clarified whether this is a guess or this is only a matter of speech..

was a guess in his answer.

Will you give me the answer again.

(Whereupon, the reporter read back the last answer.)

JUDGE SARRICA: We will let the record stand as it is.

Q What didyou then do?

A Went back to work.

Q Did you speak to Mr. Hagler prior to -- did there come a time when you left Gloria's Manor?

A Yes.

Q That day? Do you remember what time it was?

A I think between 8:00 and 8:30, after I finished my work.

Q Did you speak to Mr. Hagler that day any time before you left?

A Yes.

Q Did he -- can you tell us where you were when you spoke to him?

A In Mr. Hagler's office.

Q Was anybody present?

A Yes.

Q Can you tell us who?

A Mrs. Hagler and Mr. and Mrs. Weisbloom.

Q What did Mr. Hagler tell you?

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Q Did he say anything else to you?

A Just that he'd like to have me come back to work.

Q Do you recall if he said anything else?

A That's all I can remember.

Q Did Mr. Hagler say anything about signing something?

A Just that piece of paper that Mr. Fineguerra had.

Q No, at the time you spoke to him at the end of the day?

Do you recall if he said anything about a paper, and if so, what?

A Just the paper that Mr. Fineguerra had.

Q He mentioned it?

A He just said, you know, you should have signed the paper.

Q You mentioned that Mr. Weisbloom was there.

Did he say anything to you at that time?

A He said I was making a mistake.

Q Did you have any other conversation with Mr.Weisbloom that day?

A Yes. In the kitchen.

Q Can you tell us about what time during that day it was?

A six thirty, seven.

Q How didyou happen to see Mr. Weisbloom?

A He was in the kitchen.

Q Did he [illegible]

Q Can you tell us what he said to you?

A He told me that he would pay theinitiation fees, and you know, I wouldn't have to worry about it.

Q Were those his words?

A Yes.

Q Did you say anything to him?

A I told him no, Imade up my mind.

Q Did he say anything else about this amount he was going to pay for you?

A No.

Q He just -- were you present -- did you vote in an N.L.R.B. election?

A Yes.

Q Did you have any conversation with Mr. Hagler around the time of the election?

A Yes.

Q Do you remember when that was in relation to the election?

A Couple of hours before.

Q Where were you when Mr. Hagler talked to you?

A Right by the front door.

Q Can you tell us what he said to you?

A He said if I liked my job I'll know how to vote.

CROSS-EXAMINATION

BY MR. SCHWARTZ:

Q Mr. Cleary, were you hired as a dish washer, were you not?

A Yes.

Q That was your job?

A One of them.

Q Well, isn't that what you put down on your application for membership, dish washer?

A Yes.

Q That was the -- I show you Exhibit G.C. 13 in evidence. Isn't that what you told Local 1115 you worked as a dish washer; right?

A At that time.

Q Well, you were a dish washer on November 26th too, 1974; isn't that right?

A Yes.

Q I show you G.C. 14 in evidence.

Is that what it says?

A Yes.

Q So you told Local 1115 that you were a dish washer?

A Yes.

Q That was on November 26th and again on August 24th?

A Yes.

Q Did they ever tell you why you had to sign two cards?

A No.

Q Did you tell them that you already signed a card on August 24, 1974?

They asked you to sign one in November?

A Yes.

Q They still made you sign another card?

A They just handed it to me and I signed it.

Q You signed another card in January?

A Yes.

Q What did you do with that card?

A I gave it back to Mr. Morales.

MR. SCHWARTZ: Do you have that card?

MR. EISENBERG: No, I don't.

Q When did you start working Gloria's Manor?

A June 1974.

Q Is there any reason why you told the -- why you wrote down August the 9th on G.C. 13 in evidence?

A Because I got laid off and then went back to work.

Q When did you go back to work?

A Couple of weeks after that. I don't remember.

Q So you considered your date of employment as being August the 9th?

A Yes.

Q Were you hired in June?

A Yes. Around then.

Q And that was under oath?

A Yes.

Q And that was on March 14th, 1975?

A Yes.

Q And you told thatto Mr. Eisenberg who is trying this case; is that right?

JUDGE SARRICA: Don't shake your head, answer so that everybdoy can hear you.

THE WITNESS: Yes.

JUDGE SARRICA: Thank you.

Q So we know now that that was not true?

A Yes.

Q Mr. Hogler also told you that you were -- your work performance, the work that you did in the -- in Gloria's Manor was good?

A Yes.

Q He gave you raises?

A One.

Q Well, you got two raises all together; did you not?

A Yes.

Q And sometimes prior to March 3rd, did he have a conversation with you about dues?

A Not a conversation. He just gave me back my check.

Q Well, now you knew from Kathryn Curry -- you didn't sign an authorization card; did you?

A Not that I know of.

Q Well, didn't you tell the bookkeeper that you didn't sign an authorization card?

A Yes.

Q So you knew you didn't sign an authorization card?

A Yes.

Q And didn't you discuss this with Kathryn Curry and she told you that if the union -- that if you didn't sign an authorization card, nobody could take dues out of your pay?

A Yes.

Q So you knew this; did you not?

A Yes.

Q So you knew that when Mr. Hagler gave you back this check, how much was it?

A Thirty dollars.

Q -- thirty dollars, that that was in payment of the dues thathe had been deducting from your pay check without having the proper authorization; isn't that right?

A Yes.

Q So you knew you got the money. You knew what the money was for; right?

A Yes.

Q Now, do you recall an incident where there was a birthday party, and Mr. Hagler offered to buy you a drink?

A No, I don't. A birthday party?

A No.

Q You don't remember that conversation?

A No.

Q It didn't occur?

A I don't remember it. But I don't think it occurred.

Q It could have occurred, is that what you're saying?

He could have said that to you, you don't recall?

A Yes.

Q Now, he never said -- he never asked you any questions about the union?

In fact when he hired you he told you there was a union in the place; isn't that true?

A Yes.

Q He told you there was another union trying to get in?

A Yes.

Q And he told you he didn't care which union got in?

A Yes.

Q Right?

And it was up to you to decide whether you want to become a member of the union or not?

A That's what he said.

Q That's what he said to you at the time he hired you; is that right?

Don't shake your head because he can't take it down.

A Yes.

Q Now, isn't it further true that during your entire tenure of employment he never questioned you one time about any union activity on anybody's part; is that true?

A Not that I can remember. It could have happened though.

Q But didn't you tell Mr. Eisenberg that it never happened?

A Not that I remember, no.

Q Well, let me see if I can refresh your recollection.

All right. Refer --

MR. SCHWARTZ: May we have this marked for identification, please. Let me see if I can handle it differently --

Let's have it marked, Employer's Exhibit Number 4 for identification.

(The above referred document was marked Respondent Employer's Exhibit No. 4 for identification, as of this date.)

BY MR. SCHWARTZ:

Q Mr. Cleary, I show you Employer's Exhibit Number 4 marked for identification, and ask you if that's not your signature?

(Handing document to witness.)

A Yes, it is.

Q And you signed this, and swore to on March 14th, 1975?

A Yes, I did.

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Q Before Mr. Eisenberg?

A Yes.

Q Did you tell Mr. Eisenberg in your affidavit that Mr. Hagler never threatened you about union activities or spoke to me about it in any way?

A Yes.

Q That's a true statement?

A Yes.

Q Now, when you received a card from Local 1115, the first card, when was that?

A August.

Q Did you tell Mr. Eisenberg that you received a card from Local 1115 in August?

A I don't think I told him that, no.

Q You didn't tell him that?

A No. I didn't remember at the time.

Q When did you tell him?

A What did I tell him?

Q Yes.

The first time you received a card from Local 1115?

A I told him I received one in NOvember.

Q In November, you're sure about that?

A Yes.

Q That was the first card you received from Local 1115, you told Mr. Eisenberg that you received a card in November

A I think I told him NRvember.

Q That was not true, was it?

A No,it wasn't.

Q You never mentioned to him that you signed a card in August?

A I didn't remember at the time.

Q You didn't tell him NOvember -- I asked you whether you told him sometime in late January or early February in 1975 I signed a card for Local 1115.

Did you tell him that?

A Yes.

Q That was the first mention in the affidavit of the card that you signed for Local 1115; is that right?

A Yes.

Q So you never did tell him about your signing a card in November of '74; did you?

A Not that I can remember, no.

Q Did you recall telling him that no, when you signed a card for Local 111t, no surpervisor or boss was present?

A Yes.

Q Do you recall that?

A Yes.

Q When did you sign the card in January or February; do you recall?

A No.

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Q Did you turn the card back to Local 1115?

A Yes. As I can remember, yes.

MR. SCHWARTZ: You don't have the card, Mr. Eisenberg?

MR. EISENBERG: No.

Q And who did you give the card to?

A I think Mr.Morales.

Q You think Mr. Morales?

A Yes.

Q You're not sure?

A No.

Q Could it have been Kathryn Curry?

A It might have been.

Q And when did -- did you sign the card at the time that you attended the meeting or did you sign the card at a later date?

A When I was attending the meeting.

Q At the meeting?

A Yes.

Q Who handed you the card, Kathryn Curry?

A Mr. Morales handed me the card.

Q You're sure about that?

A At the meeting; yes.

Q And you signed it right there?

A Yes.

Q And you gave it right back to him?

A Yes.

Q But you could have given it to Kathryn Curry, you're not sure?

A Excuse me?

Q You could have given it to Kathryn Curry, you're not sure, is that what you testified to?

A At the meeting --

Q Yes, January, February?

A I gave it to Mr. Morales at the meeting.

Q You're sure about that. Okay.

You signed a petition, do you remember, that you didn't want Local 1115 to harass the employees and harass you; is that right?

A Yes.

Q Do you remember when you signed that petition?

A No, I don't.

Q You don't remember when you signed that one?

A No.

Q You signed G.C. Exhibit 7 in evidence on December 9th, 1974?

(Handing document to witness.)

A Yes.

Q And that's after you signed a card in November for Local 1115; right?

A Yes.

Q And when you signed that, did you know what you were signing?

A Yes.

Q What were you signing?

A It was a petition for 1115 to stop harassing the employees at Gloria's Manor.

Q In other words, when you signed that petition, you wanted Local 4 to represent you and not 1115?

MR. EISENBERG: Objection.

JUDGE SARRICA: Sustained.

Q What was your understanding of not harassing -- of not having Local 1115 not harassing employees?

A Well, Mr. Morales would, you know, try to get people to sign the cards, and that's the understanding I got, from just -- not talk to employees.

Q Not talking to employees?

A Yes.

Q You wanted Local 4 at this time; did you not?

MR. EISENBERG: Objection.

JUDGE SARRICA: Sustained.

Q Did you consider yourself a member of Local 4 at this time?

A Yes.

Q And when you signed any of these petitions Mr. Hagler did not know anything about it; did he?

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A Not that I know of, no.

Q Now, you testified that when you signed a card for Local 4, Donal O'Toole was with you?

A Yes.

Q Do you recall when you signed the card for Local 4?

A When I first started working there.

MR. SCHWARTZ: I'm sorry, can I have that answer read back.

JUDGE SARRICA: Please.

(Whereupon, the reporter read back the last answer.)

Q Now, what time of the day was it?

A About 11:30 or something like that.

Q In the morning?

A Yes.

Q What was your shift?

A From 8:30 until whenever I finished.

Q 8:30 in the morning?

A Yes.

Q Generally, Mr.Cleary, what time would you generally get through?

A 8:00, 8:30.

Q 8:00 at night?

A Yes.

Q And this occurred 11:30 in the morning?

A Yes.

Q Do you know what shift Donal O'Toole worked on?
A No.
Q You don't know what shift he worked on?
A He worked nights but I don't know what tim- he started and what time he went home.
Q He worked in the evening;didn't he?
A Yes.
Q Do you know what time he got through?
A I think 8:00 in the morning. I'm not sure.
Q 8:00 in the morning?
A Yes.
Q And you say he was present at 11 o'clock?
A Yes.
Q When you signed a card for Local 4?
A Yes.
Q You're sure about that?
A Yes.
Q What did he tell you about the card?
Did you read it, by the way?
A No. He told me what it said.
Q You didn't read the card?
A No, I didn't.
Q You generally don't read things that you sign?
A Someone I trust and they tell me what it is.
Q What did he tell you it was?

A He told me that Local 4 was in.

Q Yes?

A And you know, it would be a good idea to sign, so I signed.

Q What did he tell you the card was?

A Membership for Local 4.

Q It was a membership for Local 4.

Did he tell you to read it?

A Yes.

But I said just tell me what it is.

Q Did you tell Mr. Eisenberg that you didn't read the card?

A Not that I remember. I just told him that I signed for it.

Q Well, Mr. O'Toole told you to read it; didn't he?

A Yes.

Q And this is what you told Mr. Eisenberg; didn't you?

A I think I told Mr. Eisenberg that Donald was present and he told me that Local 4 was in, and it would be a good idea to sign.

Q And Mr. O'Toole -- and you didn't tell Mr. Eisenberg that O'Toole told you to read the card?

A No, I don't think so.

Q Well, let me see if I can refresh your recollection.

Is it true that you told Mr. Eisenberg on March 14th

that Donald O'Toole was with me when I signed the card. He told me to read it and sign it because he said Local 4 was in?

Did you tell him that?

A Yes.

Q So that when you testified a li-tle moment ago, that was not true, --

A I just didn't remember.

Q You didn't remember. And you just read this affidavit three days ago' is that right?

A Yes.

Q When the dues were deducted from your pay, when was the first time that the dues were deducted from your pay, by the way?

A October.

Q October?

A Yes.

Q Do you recall telling Mr. Eisenberg that in September 1974?

A Yes, I do.

Q So October was not true?

A September was not true. I made a mistake.

Q So when you testified -- when you gave a statement under oath that it was in SEptember 1974 thatyou noticed that six dollars dues was deducted, that was not a true

statement?

A It was a mistake.

Q I didn't ask you if it was a mistake. I said it was not true at the time you gave it?

A No, it wasn't.

Q Now, did Mr. Hagler tell you he -- how did you get the check from Mr. Hagler?

A He handed it to me.

Q In his office?

A Yes.

Q And he explained to you; isn't it true, that he was giving back the union dues that had been deducted because it was improperly done, that you had not signed a check off card?

A No.

Q He didn't mention anything like that?

A He didn't say it like that.

Q Well, in substance, Mr. Cleary, isn't that what he said?

A No.

Q He didn't tell you that he was returning the money that was deducted, six dollars from October, that because a mistake was made?

A No.

Q And it should not have been deducted?

A He told me thatthe union told him to give it back.

Q That a mistake was made?

A He didn't mention that.

Q Well, you knew it was a mistake when he gave you the money back?

MR. EISENBERG: Objection.

JUDGE SARRICA: Sustained.

Q When you received the money from Mr. Hagler he did not tell you that the money was being returned because the dues were improperly deducted from your pay?

A No.

He told me that the union didn't want me in any more.

Q The union didn't want you in the union any more?

A Yes.

Q And that's why they were giving you back the money?

A That's what he told you.

Q Is that your testimony here this morning?

A Right.

Q And by giving you the dues back he said to you, the union doesn't want you here any more, leave your job?

A He said the union doesn't want you in the union any more.

Q In the union any more?

A Yes.

Q But the union requested you to pay the dues, did they

not?

A Yes, they did.

Q So they did want you in the union?

An I right, when they asked you to pay the dues, if you would have paid the dues, you would have been in the union; wouldn't you?

MR. EISENBERG: Objection.

JUDGE SARRICA: Sustained.

Q But they did ask you to pay the dues?

A Yes.

Q They also asked you, I think you testified on direct examination, that theyw anted you tojoin the union?

A Yes.

But I was already in the union.

Q You were already in the union. That's wht you said. But they asked you to join the union; didn't they. and this was after they gave you the dues back, after you received the dues back; isn't that true?

A They asked me for initiation fees.

Q I didn't ask you that question.

I said I asked you whether or not they asked you to join after the dues were given back to you?

A No, not that I remember.

Q They did not?

A They just asked for initiation fees.

Q They did not ask you to join the union after you paid -- after the dues were given back to you by Mr. Hagler?

A They might have. I don't remember.

Q Now theymight have.

And you asked Mrs. Curry, Kaye Curry if she got her dues back; did you not?

A Yes.

Q What did she tell you?

A Yes.

Q And you knew, havingspoken to her in thepast, that she contended thatthe company could not deduct dues because she did not authorize them to?

MR. EISENBERG: Objection.

That I believe is beyond the scope of the direct.

JUDGE SARRICA: Overruled.

A Yes.

Q So when she received the dues back she knew why, did she not?

A She told me she didn't know.

Q But you knew that not to be the truth; didn't you?

MR. EISENBERG: Objection.

JUDGE SARRICA: Sustained.

Q Now, to your knowledge, all persons that had not signed union authorization cards permitting the -- Local 4 to deduct dues from their pay,all of these people were refunded

the dues that were deducted by Gloria's Manor; isn't that true?

A Yes.

Q And you never called or asked any representative from Local 4 how do you pay your dues now that you got your dues back?

A Will you repeat that, please?

Q I said you never called any representative of Local 4 or spoke to any representative of Local 4 as to how do you pay your dues after you got your dues back from Mr. Hagler?

A No, I didn't.

Q And you know, did you not, that when you became a member of the union, that you have to pay union dues?

A Yes.

Q Now, was there sometime prior to March 3rd, 1975, that some representative of Local 4 spoke to you about payment of dues?

A Yes.

Q And that representative -- isn't it true that that representative told you that in orderto hold your job you're going to have to pay your dues?

A Yes.

Q And in fact did not Mr. Hagler prior to March 3rd discuss with you that you had to pay your dues because the union was seeking to have you discharged for non-payment of dues?

A Not that I remember, no.

Q You don't recall that conversation?

A No.

Q Now, on March the 3rd, Mr. Hagler spoke to you and all the others telling you that you were a good worker, that you were all good workers, he wanted to keep you people on, straighten out with the union because he wanted you to continue to work there?

A Yes.

Q Did he tell you that?

In fact, isn't it true that on March the 3rd, after you were discharged, Mr. Weisbloom offered to loan you the money to pay the dues?

A I didn'ttake it as that.

Q I know, but he offered it, to loan you the money; did he not?

A No.

Q He did not offer to loan you the money?

A He offered to pay.

Q Wasn't that a loan?

A Not the way I took it.

Q Not the way you took it.

A He was going to pay for it.

Q Didn't you even tell Mr. Eisenberg that Mr. Weisbloom offered to put up the money thatyou owed the union?

A Yes. Put up the money, not loan.

Q You didn't consider that to be a loan?

A No.

The way he said it, it sounded like he was going to pay it.

Q It sounded like. Is that what --

A That's how I took it.

Q That's the way you took it. But you didn't know how hemeant it when he said he would put up the money?

MR. EISENBERG: Objection.

Q Do you?

Now, let's see --

JUDGE SARRICA: Do you have an answer to that question?

MR. SCHWARTZ: Can I have it?

MR. EISENBERG: I've objected.

JUDGE SARRICA: Let me hear the entire question because he added to it after the objection.

(Whereupon, the reporter read back the last question.)

JUDGE SARRICA: You still object?

MR. EISENBERG: Yes, I still object.

JUDGE SARRICA: Overruled.

You can answer. Did you know how he meant it?

First of all, do you know precisely what he said, what words he said?

THE WITNESS: I don't remember the exact words, but it

Q Incidentally, as you sit here now, do you now remember

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sounded to me as if he was --

JUDGE SARRICA: You can't recall the precise words used?

THE WITNESS: No.

JUDGE SARRICA: I don't see how the answer would have any meaning.

MR. SCHWARTZ: Right.

BY MR. SCHWARTZ:

Q But he indicated to you that he thought you were a good worker, that he wanted you to stay on, and he wanted you to straighten out your difficulties with the union?

A Mr. Hagler or Mr. Weisbloom?

Q Both of them.

A Yes.

Q All right.

In fact in July of 1975, you received a communication from Mr. Hagler to come back to work, did you not?

A Yes.

Q When was that?

A I received it July 21 -- no, July 21.

Q In fact -- the fact of the matter is on March the 3rd he told you he wanted you to stay on, did he not?

A Yes.

Q And you refused?

A I wouldn't sign the paper.

Q You wouldn't pay the dues?

A Yes.

Q And what did you tell him on July the -- what was the date you gave us just a moment ago?

A 21.

Q 21, what did you tell him then?

A I told him if he wanted me to work I could work from the 30th of July.

Q And he asked you to come back to work when?

A I received a letter the 21st, but I was out of town. I came home, the letter was waiting for me. The 21st was written on it.

Q That was the date of the letter?

A Yes.

Q When did you communicate with him?

A I think the 23rd, I'm not sure.

Q The 23rd of July?

A Yes.

Q What did you tell him?

A I tild him I could work for him from July 30th if he wanted me to. He said he runs his business by the day, he couldn't be certain.

Q What did you tell him then?

A Nothing. I just said goodbye.

Q In regard to the -- was it testified that on March

the 3rd a representative from the union of Local 4 made a demand upon you for payment of union dues; is that right?

A Yes.

Q Mr. Hagler never said anything to you about payment of union dues, did he?

Didn't Mr. Hagler tell you to straighten it out with the union?

Is that the words he used?

A I can't remember.

Q So that your testimony that Mr. Hagler and the representative of Local 4 said the same thing was not true; is it?

A It's true.

Q You just told me you don't know what Mr. Hagler said to you.

A You asked if --

JUDGE SARNICA: There's no question. Phrase it as a question. You are starting an argument here.

Q Did you not testify a moment ago that you don't recall what Mr. Hagler said to you on March the 3rd?

A That's what I said but I was mistaken.

Q You now remember what he said to you?

A Yes.

Q What did he say to you?

A He said just sign for the union and you won't be fire

Q He said what?

A He said just sign for the union and pay the dues and you won't be fired.

Q And you would not be fired?

A Yes.

Q That's what he said?

A Discharged, dismissed.

Q And what did the representative of Local 4 say?

A That we owe him money, dures, that was already paid.

Q You told him that it was already paid?

A I told him that I paid it.

Q But you knew that not to be true; didn't you?

MR. EISENBERG: Objection.

JUDGE SARRICA: Sustained.

Q Well, you had not paid your dues, did you?

A Yes, I did pay my dues.

Q To whom did you pay the dues?

A They were taken out of my pay.

Q But that money was returned to you, wasn't it?

A I still paid dues.

Q And you consider that payment of dues?

A Yes.

Q Not withstanding that you got the money back?

A I told him I paid dues.

Q But you knew that to be a lie; didn't you?

A No, it wasn't a lie. I did pay dues.

Q Not withstanding that the money, $30 was returned to you, you knew what that was for, you knew that you had not aughorized the company to deduct the money, and you knew that you had to pay dues in order to belong to the union?

MR. EISENBERG: Objection.

Q You're shaking your head. I don't understand what you're saying. Whether that's yes or no.

JUDGE SARRICA: I have an objection.

I think each of those questions separately have been asked and I'll sustain the objection.

There's no need to summarize it.

MR. SCHWARTZ: This is different testimony as to what he just said a moment ago and I think I'm permitted to question into it.

JUDGE SARRICA: You're permitted to individually under each. I feel the summary is unnecessary.

BY MR. SCHWARTZ:

Q Now, you testified that you paid your dues?

A Yes.

Q You did get the money back from Mr. Hagler, and that was the repayment of the dues that you paid?

A Yes.

Q So as of that date, you had paid nothing since you got the money back; is that true?

A I paid them but they were returned so I still say I paid them.

MR. REICH: I move to strike that answer as not responsive.

JUDGE SARRICA: I will allow it to stand.

MR. REICH: I ask that you direct the witness to answer the question that was put to him direct?

JUDGE SARRICA: I decline to do so.

MR. REICH: Respectfully except.

MR. SCHWARTZ: Pardon me?

JUDGE SARRICA: I decline to do so.

MR. SCHWARTZ: Is my question objectionable?

JUDGE SARRICA: You're asking for his opinion --

MR. SCHWARTZ: I did not ask him. Can I have the question reread, please.

(Whereupon, the reporter read back the last question.)

MR. SCHWARTZ: I think I'm entitled to that answer.

JUDGE SARRICA: He's already said that it was deducted from his pay and thathe got the money back.

The conclusion that is to be drawn from that is mine.

BY MR. SCHWARTZ:

Q Now, you testified on direct examination about voting in an election.

Was this an election between Local 4 and Local 1115?

A No.

Q What was this election about?

A I really couldn't tell you, because I heard three stories what the election was about.

Q So when you voted -- did you vote in the election?

A Yes, I did.

Q You didn't know what you were voting for?

A At the time I thought I knew what I was voting for.

Q But you didn't know now?

A There was three different stories told me so I don't know.

Q I'm not asking you stories told to you. I'm asking what you know now?

A I think it was an election to see if Local 4 could take your dues.

Q If Local 4 could take out your dues?

A Were allowed to or if they could be stopped.

Q Or if they could be stopped?

A I'm not sure.

Q When did this election take place?

A I think in October. I'm not sure.

MR. EISENBERG: I renew my offer to stipulate.

MR. SCHWARTZ: Don't give me any offers, please.

Q Now, you testified that you had a conversation with Mr. Hagler?

A Yes.

Q Prior to the election?

A Yes.

Q Where did this conversation take place?

A The front doors of Gloria's Manor.

Q Who else was present?

A Just the two of us.

Q What day of the week was it?

A I have no idea. It was the day of the election.

Q What time of the day was it?

A I don't know. It was before the election I know that. I don't know what time of day it was.

Q What time did the election take place?

A I'm not sure. I think 3 o'clock. I'm not positive.

Q Three o'clock.

And Mr. Hagler allegedly told you that if you like your job you would know how to vote?

A Yes.

Q And you're positive he said that to you?

A Positive.

Q Not withstanding he told you you could become a member of the union or not become a member of the union; is that right?

A Would you repeat that, please?

Q Not withstanding he told you at the time you were hired you could become a member of the union or not become a member

of the union?

A I don't understand the question.

Q Did he tell you this at the time you were hired?

A Yes, he did.

Q And he told you thathe didn't care which union won?

A At that time he did, yes.

Q Did you tell Mr. Eisenberg this in March when you signed an affidavit?

A Yes.

Q Pardon me?

A Yes.

JUDGE SARRICA: Mr. Schwartz, may I inquire how long?

MR. SCHWARTZ: You want to adjourn for lunch now?

JUDGE SARRICA: Yes. Is this a good spot.

MR. SCHWARTZ: Yes.

JUDGE SARRICA: Very well.

We will adjourn until 1:30 for lunch.

MR. REICH: May I ask particularly in view of this that the witness be instructed specifically not to discuss his testimony or the content of his affidavit with anyone during the lunch recess.

JUDGE SARRICA: Yes. I give you that instruction.

THE WITNESS: All right.

(Lunch recess taken at 12:35 p.m.)

-oO-

A Yes.

Q Didn't you tell Mr. Eisenberg, and swear to it on March 14th, 1975, the day of the election a few times before Hagler told me that if I like my job I would know how to vote. Other than what I have said, Hagler never threatened me about my union activities or spoke to me about it in any way?

Isn't that what you --

A Yes. I didn't remember it at the time.

Q You have a convenient memory, Mr. Cleary.

And you testified here today that Mr. Hagler did discuss with you your lateness, and that was the reason you quit?

A Could you repeat that again?

MR. SCHWARTZ: Repeat that, Mr. Reporter.

(Whereupon, the reporter read back the last question.)

A I said that was the reason I quit, because of the lateness?

Q I'm asking you that.

A I don't remember saying that.

Q Did Mr. Hagler ask you toreturn?

A Yes, he did.

Q And you did. Had you punched out already?

A Yes, I think I did. Yes, I did.

MR. SCHWARTZ: I have no further questions of this

witness. 451

CROSS-EXAMINATION

BY MR. REICH:

Q Mr. Cleary, when you first began working for Gloria'a Manor, shortly after you began working for Gloria's Manor, you say that Donald O'Toole was with you when someone at the switchboard askedyou to sign a card for Local 4?

A Yes.

Q Can you, to the best of your recollection, tell me when that was?

A When I first started working there. I guess between July and August. I don't know.

Q Was it during this few days in June or was it after you returned?

A I'm not sure about that either.

Q So it might have been sometime in June or it might have been July or it might have been August?

A Yes.

Q At any rate, you were a short time employee at the time this conversation took place?

A Yes.

Q And you say that Mr. O'Toole was with you when this conversation did occur?

A Yes.

Q Did Mr. O'Toole identify himself at that time as being

a shop steward or anything of that sort?

A I'm not sure.

Q You're not sure?

A No.

Q Did Mr. O'Toole ask you to sign any papers?

A He said it would be a good idea to.

Q I repeat the question.

Did he ask you to sign any papers?

A Not directly.

Q Your recollection about this whole incident a little bit hazy?

A Yes.

Q Well, it's a fact, is it not, that O'Toole was with you when you signed the card?

A Yes.

Q And it's a fact, is it not, that O'Toole told you to read it and to sign it?

That's a fact too, is it not?

A Yes.

Q And it's a fact also, is it not, that O'Toole told you to sign it because Local 4 was a union that was in?

A He said it would be a good idea to sign it.

Q Do you remember the question as I put it to you?

A Yes.

Q Shall I repeat the question?

A Yes.

Q The question is didn't O'Toole tell you to read the card and sign it because Local 4 was the union that was in?

A Yes.

Q And it's a fact, is it not, that Donald O'Toole was a shop steward at this time?

A I think he was.

Q Well, you had said that when you made your statement, didn't you?

A That he was shop steward.

Q That Donald O'Toole was shop steward at this time?

A I don't know if Isaid that in my statement.

Q You don't remember saying it?

A No.

Q You realize the statement I'm referring to is what has been marked in these proceedings as Respondent Employer's Exhibit 4 for identification, which is the statement that you gave to Mr. Eisenberg here on March 14th?

You know that's the statement I'm talking about?

A Yes.

Q All right.

I'm going to show you page 3 of that statement and see if that refreshes your recollection as to whether or not Donald O'Toole was the shop steward at this time?

A Yes, I see it.

Q You see the statement there?

A Yes.

Q Does that help you remember now whether he was or he wasn't?

A Yes, he was.

Q And it's also a fact, is it not, that you did not sign a check off authorization card for Local 4?

That's also true, is it not?

A I signed a membership card for Local 4. I didn't sign anything else.

Q My question is, isn't it a fact that you never signed a check off authorization card for Local 4?

A Is that for dues to be taken out?

Q Yes.

A No, I never did, unless it was in the membership card.

Q Do you know whether it was in the membership card?

A No, I don't.

Q You don't know one way or the other?

A I don't know if it was in the membership card.

Q Did you make a statement under oath that you never signed such a check off authorization card?

A Yes, I did.

Q Was that statement true when you made it?

A Yes, it was.

Q And is it true today?

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A Yes.

Q Incidentally, as you sit here now, do you now remember who you had this conversation with in addition to O'Toole?

A No, I don't.

Q You've never been able to recall that?

A No.

Q Do you recall what you did with the card that you did sign?

A I gave it back to the switchboard operator.

Q The same person who you don't remember?

A Yes.

Q Did you ever see that card again?

A No.

Q Then there came a time; did there not, when you first noticed that six dollars was being deducted from your pay?

A Yes.

Q When was that?

A October.

Q Not September, as you said in the statement?

A No. I was mistaken.

Q And at that time, when the six dollars was deducted, who, if anyone, did you talk to about it, at the time that you first noticed it?

A Kaye Curry.

Q Were you parricularly friendly with Kaye Curry?

A Yes.

Q Did you and Kaye Curry discuss various things about the employees in the palce?

A Not really.

Q Did you and Kaye Curry talk about Local 1115?

A Once in a while.

Q Well, before you asked her about the six dollar deduction, had you spoken to Kaye Curry about Local 1115?

A Before the deduction was taken out?

Q Yes.

A On occasion I guess.

Q Had you been at any meetings of 1115 with Kaye Curry?

A Yes.

Q And you knew that Kaye Curry was spearhead in trying to get Local 1115 to be a union representative in Gloria's Manor?

A I didn't catch that? Would you repeat that.

JUDGE SARRICA: Have the reporter read it.

(Whereupon, the reporter read back the last question.)

A What do you mean by "spearhead"?

Q You knew that she was active in that attempt; did you not?

A Yes.

Q And she was, would you regard as the leader of this attempt to bring 1115 in,at that time?

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A Yes.

Q And so when you noticed the six dollar deduction being made from your pay, you spoke to Kaye Curry because of this activity; is that right?

A Not just that, because she's a friend of mine.

Q Did you have any other friends in Gloria's Manor?

A Yes.

Q Did you speak to any of your other friends?

A Not that much.

Q About this matter, about the six dollar deduction?

A Ijust asked them if they got a deduction out of their pay too.

Q Who did you ask?

A All the ones that were discharged and other ones. All the employees I asked.

Q This is in October we're talking about, right?

A Yes.

Q In October who did you speak to about the six dollar deduction?

A Kaye Curry.

Q Who else?

A And all the other employees.

Q Who were the other employees?

A Joan Gruenke, Mary Abernathy, Wanda Sullivan -- no, not Wanda.

Q Wanda Sullivan yes or no?

A No.

Q No.

A Almost all of the employees

Q That doesn't tell me anything. You mentioned Mrs. Gruenke, Mrs. Abernathy and Kaye Curry. Anyone else that you spoke to in October when the first time you noticed six dollars being taken out?

A I can't remember all the other people.

Q But there were other people?

A Yes.

Q All together how many people would you say you spoke to about this?

A Ten or eleven, I guess.

Q In October of 1974?

A Right.

Q In the first week of October 1974? At the time the money was taken out; is that correct?

A Yes.

Q Did they tell you dues were being taken out because Local 4 was in?

A They just said they got a deduction from their paycheck.

Q They said they got a deduction too?

A Yes.

Q Every employee you spoke to got deductions or told

you they got deductions; is that correct?

A Yes.

Q And that included at least five people who were not named in this charge; is that correct?

A Yes.

Q Now, I'm going to the time when you got your check, the refund of the dues. You remember that occasion?

A Yes.

Q And you remember that you spoke to Kaye Curry about that refund also, whether she got one; is that right?

A Yes.

Q And you spoke to Arlene Slattery, you said, is that right?

A Yes.

Q You speak to anyone else?

A I might have asked a couple of other people if they got their refund.

Q And some said yes and some said no?

A Yes.

Q Is that correct?

A Yes.

Q Some did say they didn't get them; is that right?

A Yes.

Q Do you remember the names of those who said they didn't get refunds?

A Arlene Slattery, Steven Donohue.

Q Anyone else?

A Not that I remember, no.

Q Well, you were also told, were you not, that these people had signed check off authorizations?

Weren't you told that?

A No.

Q Arlene Slattery didn't tell you that she had signed a check off authorization?

A No.

Q Never mentioned it to you?

A No, never.

Q How well do you know Arlene Slattery?

A I met her when she started working there.

Q Do you know her signature?

A No.

Q You never saw her sign her name?

A I saw it, but I don't know it.

Q Well, I show you this piece of paper, and ask you if you recognize that as her signature on that?

(Handing document to witness.)

A I have no idea.

Q Thank you.

Are there any other names that you can remember, people you spoke to about whether they got refunds of checks?

A No.

Q Incidentally, when you made this statement to Mr. Eisenberg on March 14th, did you tell him about having spoken to Steven Donohue and Arlene Slattery?

A Arlene Slattery.

Q You told him about Slattery?

A Yes.

Q You're shaking your head. It doesn't come --

A Yes.

Q Did you ever speak to any Local 4 representative about dues being taken out of your pay from October until you got it back in February?

A No.

Q You did see soem of these representatives at different times, you testified, at meetings?

A Yes.

Q But you never raised the subject with them?

A No.

Q You knew that there was no -- that the dues were being withheld from your wages without your authorization?

A Yes.

Q But you made no argument to anyone connected with Local 4?

A No.

Q And a time came when you got back all the money that

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had been taken out of your pay for dues; is that right?

A Yes.

Q You told us about that, a check drawn on Jo-Jo Management signed by Mr. Hagler for $30, I believe?

A Yes.

Q Now, you discussed this refund at or about the time that a charge was filed in this case with these other five people; didn't you?

A Could you repeat that, please?

Q Certainly.

You know that a time came when a charge was filed with this Board involving this situation; don't you?

A Yes.

Q Do you know when that was, incidentally?

A Beginning of March.

Q At or about that time did you discuss with the other people involved in this case this situation, the refund, the dues?

A Not that much.

Q I didn't ask you much or little.

Did you talk to them about it at all?

A I guess so, yes.

Q Don't guess, please.

A Yes.

Q If you remember tell me, if you don't remember tell me.

A Yes.

Q Did you talk to Mrs. Curry?

A Yes.

Q And Mrs. Abernathy?

A Yes.

Q And Mrs. Gruenke?

A Yes.

Q And Mr. Morales?

A Yes.

Q And Mr. Eisenberg?

A Yes.

Q You spoke to Mr. Eisenberg about this the beginning of March?

A When I mademy statement.

Q Did you also speak to a Mr. Epifanio?

A No, I didn't.

Q Now, in the course of your discussions, what there a discussion about a theory that if money had actually been taken out of your pay the fact that it was then returned didn't change the fact that you were a member in good standing?

Did you discuss that subject with anybody?

A Would you repeat that question, please?

JUDGE SARPICA: Will the reporter please read the question again.

(Whereupon, the reporter read back the last question.)

MR. EISENBERG: I'm going to object to that. I don't see how that's relevant.

JUDGE SARRICA: Overruled.

THE WITNESS: I don't understand that question.

JUDGE SARRICA: You want it read again?

THE WITNESS: I just didn't understand, you know, what he said.

BY MR. REICH:

Q Is it some of the language in the question that you don't understand?

A It'sjust confusing to me, the whole question.

Q You don't understand any part of the question at all?

You don't know what it means, is that what you're saying?

Don't shake your head, please, I want an answer.

A Yes. It's confusing.

Q All right.

Let me see if I can simplify it.

You've already told me that you've discussed the taking out of dues and the returning of the dues with these various people.

A Yes.

Q Including Mr. Morales and including Mr. Eisenberg.

A Yes.

Q Now, I'm asking you, in these discussions with all

these people, did anyone, you or anyone else, come up with the suggestion ormake the statement that once we paid our dues or once the dues were taken out of our pay envelope we were paid up iwth the union whther we got the money back or not?

Do you remember that being mentioned by somebody?

A Yes.

Q Who mentioned that?

A I mentioned it.

Q Who else mentioned it?

A I guess the five of us that were discharged.

Q Kaye Curry mentioned it?

A Yes.

Q Did Morales mention it?

A Not that I know of.

Q What do you mean not that you know of?

Do you remember or don't you remember?

A No, I don't.

Q You don't remember?

Don't shake your head, please.

A No.

I just remember the five of us that were discharged talking about it.

Q Did Mr. Eisenberg mention it?

A No. But I mentioned it to him.

Q Who was the first one to make that suggestion, if you remember?

A I don't know.

Q It wasn't you; was it?

A No.

Q Somebody said it first and you agreed with it; is that correct?

A Yes.

Q Now, let me examine this theory a little bit.

It's a fact, is it not, that a total of $30 was taken out of your pay envelope over a period of five months time?

A Yes.

Q Six dollars per month for five months; that is correct?

A Yes.

Q And it;s a fact, is it not, that after this $30 had all been taken out of your pay you got back a check for $30?

A Yes.

Q In refund of those dues?

A Yes.

Q And it's a fact, is it not, that after you got this check back, you never again paid one penny to Local 4 directly or indirectly in any fashion?

That also is a fact; is it not?

A Yes.

Q And it's a fact, is it not, that as of March the 3rd,

1975, Local 4 had not received any money from you for dues?

That also is a fact; is it not?

A Yes.

Q And it's a fact, is it not, that in order to be a member in good standing, or to be in good standing under the terms of the contract, you couldn't be in arrears for more than two months in dues?

That also is a fact; is it not?

A Yes.

MR. REICH: No further questions.

REDIRECT EXAMINATION

BY MR. EISENBERG:

Q Mr. Cleary, let me direct your attention to February 28 and March 3rd.

Could you tell me again how much Mr. Fineguerra asked you to pay on February 28th?

MR. REICH: Objected to. Improper redirect.

MR. SCHWARTZ: Objection.

JUDGE SARRICA: Sustained.

BY MR. EISENBERG:

Q At any time, Mr. Cleary, did any Local 4 delegate ever say anything to you about when dues or fees should be paid?

MR. REICH: Objected to as improper redirect.

JUDGE SARRICA: Overruled.

A No.

you're going to get them. Let's not anticipate.

Your Honor, unless specifically directed by you, I shall refuse toturn over to counsel for the General Counsel all our membership applications, all our dues records involving employees of this place on the grounds that it is utterly irrelevant. I don't think that counsel ought to at this time be permitted to go into a fishing expedition or to go into our internal affairs needlessly.

If he says he wants the record of Mary, Joe, Mike or Ben, if I have them, they'll be given to him. But just carte blanche to turn over the records, they're none of his business and particularly none of the business of Local 1115.

Once I turn them over they are available to 1115 as well as to Employer's counsel.

JUDGE SARRICA: Off the record.

(Discussion off the record.)

JUDGE SARRICA: On the record.

MR. REICH: Your Honor, following off the record discussions as well as on information and believe conferences between counsel for the General Counsel and other personnel of the Board, we have arrived at the following understanding:

That on behalf of the Respondent Union I will turn over for examination by Counsel records indicating all moneys received for all employees of Respondent Employer during the

entire period covered by this complaint.

JUDGE SARRICA: Off the record.

(Discussion off the record.)

JUDGE SARRICA: On the record.

MR. REICH: We will also stipulate that the amounts deducted from the alleged discriminatees in this case as reflected by the Board were deducted over the respective number of months without written authorization having been executed by each of said employees for such purpose, and that the total amount so deducted or withheld were returned to each of the employees by the checks which are in evidence in this proceeding.

JUDGE SARRICA: Incidently, I accept a stipulation of the checks. They weren't made an exhibit.

MR. REICH: Then I suggest that we change the word checks in evidence to stipulation heretofore made.

JUDGE SARRICA: Thank you.

MR. REICH: Is that acceptable?

JUDGE SARRICA: Is that acceptable to counsel?

MR. EISENBERG: That is acceptable to counsel.

JUDGE SARRICA: Mr. Schwartz?

MR. SCHWARTZ: That's acceptable.

JUDGE SARRICA: Then the stipulation is received.

MR. REICH: May the record indicate that I'm at this time handing over to counsel the records which I indicated

I would do so.

JUDGE SARRICA: The record will so reflect.

MR. EISENBERG: May I have a few minutes to go over them?

JUDGE SARRICA: Yes. Off the record.

(Discussion off the record.)

JUDGE SARRICA: On the record.

MR. EISENBERG: General Counsel calls Vincent Gulino.

Whereupon,

VINCENT GULINO

called as a witness, first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EISENBERG:

Q Mr. Culino, would you please state your full name and spell it for the record?

A Vincent, V-I-N-C-E-N-T , Gulino, G-U-L-I-N-O .

Q Mr. Gulino, do you have any official capacity with Medical and Health Employees Union Local 4?

A Yes.

Q Can you tell me what that capacity is?

A President.

MR. EISENBERG: Your Honor, I request permission to question this witness as -- under Rule 43-B.

JUDGE SARRICA: Granted.

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BY MR. EISENBERG:

Q Mr. Gulino, does Local 4 require union dues from employees it represents?

A Yes, we do.

Q Do you require dues for members of the union who work at Gloria's Manor?

A Yes, we do.

Q How much -- how much are those dues?

A Six dollars.

Q And for what period is that six dollars for?

A Per month.

Q Per month?

A Yes.

Q Does the union also require initiation fee?

A Yes.

Q What is the amount of that initiation fee?

A Thrity-five dollars.

Q Is that $35 amount applied to employees at Gloria's Manor?

A Yes.

Q Mr. Gulino, isn't it a fact that Local 4 never collected initiation fees from employees until after the end of March?

A After the end of March --

JUDGE SARRICA: Which employees?

Q Any employees?

A Any employees, what do you mean?

Q That are employed by Gloria's Manor?

A Oh, Gloria's Manor. No, I don't believe we did. Because of a stipulation that was there.

Q There was a stipulation there?

A By the former president that was there, Bob Gordon.

Q What was that?

A That the people that were employed at the time we organized, you know, they organized the place, did not have to pay. Anyone that came after that, would have like a year, so we respected his wishes.

Q Does Tim McGeary still work for Gloria's Manor?

A If you got a card he's still working there.

Q Had he paid initiation fee of $35?

A I believe they're all paying now.

Q Have any of them paid in full?

A Not that I know.

MR. REICH: May I have the record indicate that it has not been established that this witness is familiar with the record keeping or the dues payments or lack of payments. We're getting a lot of speculation here, I think.

Q Mr. Gulino, are you familiar with the dues keeping operation?

A No.

Q Record keeping operation?

A No.

Q When you answered the questions previously, did you answer that from personal knowledge?

A Well, I answered it with the knowledge that I do know that we do collect dues, and when problems arise, I look into the records.

Q Have problems arisen?

A I do not personally keep the records.

Q Are you familiar with the records?

Aren't you the president?

A Yes.

I understand how it works, how it operates, the function of the office, but I do not keep the records, which they change every month, every other month they change.

JUDGE SARRICA: The records change or what?

THE WITNESS: Peopel leave, new people come.

JUDGE SARRICA: You mean the individuals who are paying?

THE WITNESS: As far as the system themselves, Your Honor, they stay the same.

MR. EISENBERG: At this time, Your Honor, I will ask that these documents be marked for identification as General Counsel's 15 --

THE WITNESS: Your Honor --

MR. REICH: Hold it.

JUDGE SARRICA: No question is before you.

MR. EISENBERG: A through S.

MR. REICH: Your Honor, I ask that General Counsel be requested to substitute copies for the originals and the originals not be marked in evidence now be stapled or marked in any other fashion?

JUDGE SARRICA: Can you accommodate that request?

MR. EISENBERG: Can we go off the record a minute?

JUDGE SARRICA: Off the record.

(Discussion off the record.)

JUDGE SARRICA: On the record.

(The above referred documents were marked General Counsel's Exhibit Nos. 15-A through S for identification, as of this date.)

BY MR. EISENBERG:

Q I show you, Mr.Gulino, copies of documents marked General Counsel Exhibit 15-A through S for identification.

Could you tell us what these documents are?

MR. REICH: I'll stipulate, counsel, that they're payment records for employees of Gloria's Manor kept in the regular course of business of the union.

Is that what you're interested in?

JUDGE SARRICA: Do you accept his stipulation?

MR. EISENBERG: I so stipulate, yes.

JUDGE SARRICA: Accepted.

BY MR. EISENBERG:

Q Are these records, Mr. Gulino, to the best of your knowledge, accurate?

A Yes.

Q I show you General Counsel's Exhibit for identification 15-A.

Can you tell me what that document represents?

(Handing document to witness.)

Q Records on moneys that were collected as far as dues --

MR. REICH: Records of who, I didn't hear you.

A Record of moneys which was collected.

MR. CHWARTZ: What's the name?

THE WITNESS: Tom McGeary.

MR. REICH: Tim.

THE WITNESS: Tim McGeary.

Q How has the union collected the dues from Mr. McGeary from November through July?

A Check off.

Q Check off sent to the union by the employer?

A Yes.

MR. REICH: You mean the other way around.

MR. EISENBERG: Sent to the union by the employer.

MR. REICH: Moneys you're talking about, yes.

Q Has Mr. McGeary made his $35 initiation fee in full?

A No, he's --

MR. REICH: Objected to.

JUDGE SARRICA: What's the basis?

MR. REICH: It's immaterial whether Mr. McGeary paid $35 or not. There's no evidence here as to when Mr. McGeary began working.

In view of this witness' testimony at this point it would be utterly irrelevant. His testimony, if I may try to refresh your recollection, as I understood it, was that anyone who was employed at the time the agreement originally was made or place was organized the witness called it dues were waived for.

All other parties were given one year thereafter to begin paying dues.

Was not that the testimony?

JUDGE SARRICA: Let us go off the record.

(Discussion off the record.)

JUDGE SARRICA: On the record.

I'll ask you to withdraw the question.

MR. EISENBERG: I'll withdraw the last question.

BY MR. EISENBERG:

Q You mentioned something about a stipulation, Mr. Gulino?

A Yes.

Q Can you tell us what that was?

A A stipulation was made with Bob Gordon and the people

of Gloria's Manor at the time when he was organizing the place --

Q What was it?

A The people that were there, the original people, he was going to avoid the initiation money, and any new people that come after that for a period of one year to the date of the contract, then he was going to start collecting initiation money.

Q I don't really understand. You mean people hired after a year from the time the union first started organizing there would not have to pay initiation fee?

MR. REICH: Objected --

JUDGE SARRICA: You withdraw that.

MR. REICH: I withdraw the objection.

A The people that worked there through that year, the first year, then after that he was going to start collecting the initiation money and anyone after that was going to pay in full.

JUDGE SARRICA: After the one year had expired?

THE WITNESS: Yes.

Q Anyone that was hired after the one year had expired?

A Right.

Q When did Mr.Gordon make this stipulation?

A Well, when he was alive organizing the place.

Q When did that occur, approximately?

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A I would say in February, March, when he got in there to start organizing. I think it was in March. March or April.

JUDGE SARRICA: Of what year?

THE WITNESS: '74.

Q Did you ever tell -- isn't it a fact that you told the employees virtually the same stipulation when you met with them?

A Yes. No.

In fact it was told to me, and I says I would honor Bob Gordon's word. He passed away, you know.

Q I see.

AGain I show you General Counsel's Exhibit for identification 15-A.

Could you tell me what that document that I've handed you represents?

(Handing document to witness.)

A It's a record of dues paid for Tim McGeary.

Q Isn't it a fact that Tim McGeary hasn't paid his $35 initiation fee?

A No. But he's paying it.

Q How is he paying it?

A He's making payments.

Q How has he been making these payments?

Has he been doing it himself?

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A From these records I see two dollars a week -- not a week -- I'll tell you in a minute. It looks like every two weeks he gets two dollars towards the initiation money.

Q Every week?

JUDGE SARRICA: Every two weeks he said.

A Every two weeks.

Q Do you know how the union receives that money?

A By check.

Q From who?

A From the employer.

Q Mr. Hagler?

A Yes.

Q Isn't it a fact that Mr. McGeary has been employed prior to November 7, 1974, at Gloria's Manor?

A Yes. It indicates. It shows it there. He should have started like the early part of September. His first dues payment was in October.

Q He signed the check off authorization form?

A I believe he has.

Q All right.

A In fact I think he did.

Q I show you General Counsel's Exhibit 15-B.

Can you tell me for whom these are the dues records?

(Handing document to witness.)

A Tom O'Toole.

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Q And how has the union been collecting dues from Mr. O'Toole?

A Six sollars a month check off.

Q Is Mr. O'Toole -- he hasn't paid any initiation fee, has he?

A No, I don't see any.

Q Mr. O'Toole is still working at Gloria's; isn't he?

A Yes, he is.

Q So is Mr. McGeary; isn't he?

A Yes, he is. I believe Mr. O'Toole is an original member.

Q There is a special rule for an original member?

A That's what the stipulation was with Bob Gordon, working there at the time of the contrapt wouldn't have to pay any initiation.

JUDGE SARRICA: What is the one year --

THE WITNESS: From what I understand, Your Honor, when Bob first organized this place it wasn't certain if this place was going to be in business after one year, so he eliminated the initiation money for one year, and if the place was still in business they were all going to pay the initiation fee.

JUDGE SARRICA: Then it wasn't a waiver, it was a deferral?

THE WITNESS: Deferral except for the original people

now.

BY JUDGE SARRICA:

Q Except for those who were employed on the day he entered the stipulation with them before they were brought in as a majority representative?

A Right. That's my understanding, right.

JUDGE SARRICA: I'm sorry, to interfere, but I needed to understand the testimony.

BY MR. EISENBERG:

Q Isn't it a fact that Mr. O'Toole was employed prior to October?

A Yes.

Q 1974?

A I believe so.

Q Aren't these the union dues records for Barbara Davis? I show you General Counsel 15-C for identification.

(Handing document to witness.)

A Right.

Q She hasn't paid an initiation fee either, has she?

A I believe she was an original member also.

Q You haven't requested her to pay initiation fee, have you?

MR. REICH: Objected to.

JUDGE SARRICA: Basis?

MR. REICH: It's untterly immaterial. Not only

immaterial but according to his testimony would be improper to make such request, if he's correct in the statement that she's an original member quote close quote.

MR. EISENBERG: Perhaps I'll inquire as to what an original member is.

JUDGE SARRICA: Will you please develop that.

BY MR. EISENBERG:

Q What is an original member?

A The original people that were there at the time when they signed the contract.

Q When was that, May 1st?

A It believe it was May 1st. What's the date on the contract?

Q She doesn't have to pay initiation fee; right?

A That was the stipulation he had.

Q I still don't understand the stipulation again.

How do original members fit into this stipulation?

MR. REICH: Your Honor, I object as being repetitive.

JUDGE SARRICA: I have to say I don't quite understand either. When I think I understand then I get an answer that doesn't measure with it and I would like it clarified.

MR. REICH: May I ask the witness be excused from the room so I am not charged or chargeable with coaching him and I will then offer a stipulation which will clarify it in everyone's mind.

JUDGE SARRICA: Please step out.

(Witness excused from the hearing room.)

MR. REICH: I can understand from the way the witness is testifying the difficulty in following it exactly.

My understanding is from his testimony, that any employee who is there at the time of the execution of the contract, to wit, May 1, 1974, as to that employee, dues were waived.

JUDGE SARRICA: Dues --

MR. REICH: Initiation fee.

JUDGE SARRICA: Waived forever.

MR. REICH: Forever.

As to any employee is hired during the ensuing year, that is between May 2nd, 1974 and May 1975, intiiation fee or the payment thereof was deferred until the expiration of the one year, when they would begin making payments on that account.

As to employees hired after May of 1975, they would be immediately, treated at the end of the thirty days.

JUDGE SARRICA: Right.

We have your understanding of it as a proffered stipulation.

General Counsel can you accept the stipulation?

MR. EISENBERG: I don't think I can, Your Honor. I want to find out from this witness whether it is in fact his

understanding.

MR.REICH: You're going to be met with a lot of objections and because you're getting hearsay testimony.

MR. EISENBERG: I think we're getting direct testimony. He said something to the employees. It certainly is in issue.

MR. REICH: He indicated to you and it is a fact that this arrangement was made by someone other than him, and who is not subject to even subpoena by you. He having taken the way out of dying long before you issued a complaint. So that he has given you the benefit of his understanding and his application of that.

JUDGE SARRICA: That's what we want any way.

We can return the witness.

(Witness returns to the hearing room.

JUDGE SARRICA: Thank you for your offer, Mr. Reich.

BY MR. EISENBURG:

Q Mr. Gulino, let me go back a minute.

Did there come a time when you told employees about some kind of situation with respect to initiation fees?

A It was told to me and I just --

Q Didn't you say anything to employees?

A Repeated what was told to me in that respect.

Q Do you remember what you repeated to employees?

You told them they didn't have to pay the initiation

fee; didn't you?

A All I did was repeat what was told to me, that the original people don't have to pay, any people that came after that would have to pay in a year's time.

Q When would that year's time expire?

A May, April -- the date of the contract.

Q So nobody had paid initiaition fee until May, maybe even later than that?

A Right.

Q Was Barbara Davis one of those original people that were employed there at the time the contract was executed?

A I believe so.

Q You never asked her for initiation fee; right?

But she's still working there?

JUDGE SARRICA: You shook your head and the reporter needs to get the answer.

A Oh. I don't believe so.

Q And she's still working there to your knowledge?

A Consequently, as I said before, I do not handle the collection of dues so I really don't know.

Q I show you General Counsel's Exhibit 15-D for identification.

Isn't that the dues -- union dues records for Mary Duffy?

(Handing)

A Yes, sir.

Q Mary Duffy is an employee of Gloria's; isnt' she?

A Yes, sir.

Q She's paid dues; hasn't she?

A Yes, sir.

Q She's paid dues from October through July; isnt' that right?

A Yes, sir.

Q She hasn't paid an initiation fee, has she?

A I don't see it on the record.

Q It would be on the record if she has paid an initiation fee?

A Yes.

Q Is she one of the original employees, do you know?

A That I really couldn't tell you, I don't know. Bob Gordon passed away, we moved the office, and I believe all the records are going to say from October on.

Q You started collecting initiation fee from Tim McGeary in July, isn't that right -- first payment?

A First payment was July 10th, right.

Q 1975?

A '75, right.

Q I show you General Counsel's Exhibit 15-E. Aren't those the dues documents for Steven Donohue? (Handing)

A Yes, sir.

Q He's paid dues; hasn't he?

A Yes, sir.

Q From October to --

A From November.

Q November.

And you collected initiation fee from him; haven't you?

A Yes. We started --

Q June 19th, right?

A June 19th, right.

Q He wasn't one of these original employees, right?

A Pardon?

Q He wasn't one of these original employees; is that right?

A I really don't know.

Q How did the union decide to collect initiation fees from one employee and not from another?

A Because I haven't got them records here.

Q You don't --

A We can tell by the membership cards the date of their employment.

Q How has the union receiving these moneys, do you know?

MR. REICH: That's been asked at least three times.

Q For initiation fees?

MR. REICH: Twice at least, Judge.

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JUDGE SARRICA: Is this for the purpose of asking about all of them, all of these records thatyou have in your hand?

MR. EISENBERG: I'll withdraw the question, Your Honor.

BY MR. EISENBERG:

Q Have all the moneys that the union has collected for initiation fee been through the check off situation?

A Yes, sir.

Q Isn't it a fact thatthe union has received initiation fee from no employee at any time before June the 19, 1975?

A I can't answer that without looking at the records.

Q I'll showthem to you.

MR. REICH: Stipulate that that's what Exhibit 15 indicates.

A Okay.

MR. EISENBERG: I accept.

JUDGE SARRICA: Mr. Schwartz, I take it your silence to be no objection to the stipulation?

MR. SCHWARTZ: No objection.

JUDGE SARRICA: Stipulation received.

BY MR. EISENBERG:

Q Isn't it a fact that only one employee has ever made a full initiation fee?

A I can't answer that unless I look at the record.

Q I show you General Counsel's Exhibit 15-S.

Can you tell us what that is?

(Handing)

A It's initiation money paid June 19, 1975 in full.

JUDGE SARRICA: By whom?

THE WITNESS: Eileen Carey.

Q Doesn't your record also indicate she was terminated on July 3rd, 1975?

A That's what it indicates, yes.

Q Didn the union ask Mrs. Curry for an initiation fee -- Kathryn Curry, on March 3rd?

A I believe she was asked.

Q Wasn't Mr. Cleary asked for an initiation fee?

A I believe he was.

Q Wasn't Mrs. Abernathy --

MR. REICH: I object to these questions as calling for either speculation or hearsay. He's asked about events which -- he's being asked with respect to events at which he was not present.

JUDGE SARRICA: That's his answer. I will overrule the objection.

BY MR. [illegible]:

Q Wasn't Mrs. Abernathy asked for initiation fee, around March 3rd?

A I believe she was. I don't know.

Q Wasn't Mrs. Curry?

A From all those testimonies that is what I heard and this is what I'm --

Q Didn't Mr. Pineguerra tell you anything?

MR. REICH: Objected to.

JUDGE SARRICA: Limit toquestion -- anything about what?

MR. EISENBERG: I'll repurase the question.

Q Didn't Mr. Pineguerra tell you the amounts of money he was demanding from these people?

A He didn't tell me anything and I didn't ask him because he handles that, that department.

Q I see.

He didn't tell you anything at all that he was asking for initiation fee?

A We discussed it, when I was down there -- I went down there, we discussed it and then he took over because that's his department.

Q And he didn't report to you what had happened?

A Surely he reported. He reported that they refused to pay their dues and they're --

And initiation, right?

MR. REICH: Objected to.

Q They didn't pay their initiation --

JUDGE SARRICA: Keep the question and answer separately here. And I don't know what you're objecting to?

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MR. REICH: I'm objecting to counsel interjecting while the witness is answering and inserting in addition to the answer.

MR. EISENBERG: I'll reframe it, Mr. Reich. You're correct. Thank you.

JUDGE SARRICA: I've already brought that to his attention.

BY MR. EISENBERG:

Q He never told you anything about an initiation fee either?

A He may have.

Q Same thing goes for -- withdrawn.

Do you know if the union requested initiation fee from Wanda Sullivan?

A May have.

Q Mr. Fineguerra tell you the amounts of money that he was requesting?

A No.

That's his department. He handles all the figures, the money coming in, he puts the money in the bank.

MR. EISENBERG: At this time, Your Honor, I wish to offer General Counsel's 1-a-a through 5 into evidence.

MR. REICH: I have no objection.

MR. SCHWARTZ: I don't know what the purpsoe is. We just went through almost an hour of testimony and I don't --

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I don't know what this is going to do. What's the purpose and materiality?

JUDGE SARRICA: You're objecting on the basis of materiality?

MR. SCHWARTZ: Yes.

JUDGE SARRICA: Overruled.

And General Counsel's 15-A through S is received.

(The above referred documents marked General Counsel's Exhibits Nos. 15-A through S received in evidence, as of this date.)

MR. SCHWARTZ: May I see that.

MR. EISENBERG: I have nothing further of the witness.

CROSS-EXAMINATION

BY MR. SCHWARTZ:

Q Tim McGeary was not an original employee, was he?

A Not to my knowledge.

Q And the first time initiation fees were taken out of his pay was in July of '75; is that correct?

A If I remember the record correct, yes.

Q Mr. O'Brien was an original employee; is that right?

Let me ask you this question, sir, would you know what record would the union have which would reflect which employee was an original employee?

A The authorization cards has the date of employment.

Q I notice that the first time initiation fees were

taken out in any of General Counsel's Exhibit 15 in evidence A through S, reflect June 19, 1975 as being the first time initiation fees were deducted by the employer.

When did the union receive this money, do you know?

Do you have any record with you that would reflect --

A When we received it?

Q Yes.

A Yes.

We have copies of the checks which are submitted to us.

Q Is G.C. 15 in evidence A through S the union's records reflecting receipt of the money?

A No.

We have a regular billing system.

Q I see.

JUDGE SARRICA: That is not a direct answer though to the question.

THE WITNESS: I don't understand.

JUDGE SARRICA: Please, read that question. Maybe I didn't understand. Counsel seems to be satisfied.

(Whereupon, the reporter read back the last question.)

BY MR. SCHWARTZ:

Q Do you know? Do you know the answer to that question?

JUDGE SARRICA: You answered it, didn't you?

THE WITNESS: I did answer.

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(Whereupon, the reporter read back the last answer.)

Q I see.

MR. SCHWARTZ: I have no further questions.

JUDGE SARRICA: Mr. REich.

MR. REICH: Yes, please.

BY MR. REICH:

Q These records which are in evidence, Exhibit 15, we'll take an item --we'll take the very first one, 15 -- G.C. 15-A, Tim McCeary's.

There's a notation on here, 7/10/75 initiation fee, two dollars, you see that?

A Yes.

Q The 7/10/75, I think the question that Mr. Schwartz was asking you and if he wasn't I'm asking you, the question is that the date the union recieved the money or is that the date the employer took it out of the pay, if you know?

A That's the day we received it.

Q Looking at this you don't know when the employer actually checked it off?

A No.

When we received the money.

Q Now, I want to be sure that we understand the original members as against carbon copies. First of all you mentioned Bob Gordon.

Who is Bob Gordon in relation to Local 4?

A The deceased president of Local 4 and founder.

Q And do you know when he died?

A I believe it was August 2nd, 1974.

Q And until August 2nd, 1974, you say he was the president?

A Yes, sir.

Q And he's the one who executed the collective bargaining agreement in this case?

A Yes, sir.

Q And he's the one who was invovled in the organization here?

A Yes.

Q Now, I'm going to ask you with respect to the understanding that you obtained of what Mr. Gordon committed the union to at the time he organized it, first of all if I understand you correctly, you said that any employee who was there as of the date the contract was made, May 1, 1974, initiation fees were waived completely, didn't have to pay it; is that right?

A Yes, sir.

Q Now, there was a second group of employees, those who are hired after May 1, 1974, for one year period?

A Yes, sir.

Q What was your understanding with respect to initiation fees for them?

A After one year -- in other words, anyone that was there, after the contract was a year old would have to pay initiation money, except those that were hired -- that were there when we signed the contract.

Q And those who were not there when you signed the contract but who came in after that, and were there during that year, how wouldthey be required to pay the initiation money, in one lump sum or in payments or how?

A How they can.

Q When you say "how they can", you mean at their convenience?

A Yes.

Q You weren't going -- he wasn't going to be rough on them and insist on a lump sum; is that right?

A No, Sir.

Q Now, the five employees who were named in this complaint, Mary Abernathy, William Cleary, Cathryn Curry, Joan Gruenke, and Wanda Sullivan, to your knowledge, did local 4 ever receive anydues, initiation fees or other revenue of any kind from them or for them?

A None.

Q To your knowledge, did any of these five people have employment which began on or about May 1, 1974, when the contract was made?

A No.

JUDGE SARRICA: On the record.

Do you have any further questions?

MR. SCHWARTZ: No.

But I assume he will be available for further testimony.

JUDGE SARRICA: You're excused.

(Witness excused.)

JUDGE SARRICA: On the record.

MR. EISENBERG: General Counsel at this time calls Joan Gruenke.

Whereupon,

JOAN GRUENKE

called as a witness, first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EISENBERG:

Q Mrs. Gruenke, could you state your name and spell it and give your address for the record?

A Joan Gruenke, J-O-A-N G-R-U-E-N-K-E, 241 Beach [illegible] Street, Rockaway Park, New York 11694

Q Mrs. Gruenke, did you work for Clorox's [illegible] Los Indios?

A Yes.

Q Could you tell us when you were hired?

A August 15th or 16th, '74.

Q Did there come a time when you were discharged?

A Yes.

Q Do you recall the date?

A March 3rd.

Q What year?

A '75.

Q What was your job, Mrs. Gruenke?

A I was a chambermaid.

Q Is that all you did?

A Part time waitress.

Q Can you tell us in personal terms approximately how much time you spent as a chambermaid?

A Most of the time.

Q Can you recall the percent?

MR. SCHWARTZ: Objection.

What difference does it make?

JUDGE SARRICA: Is it close as to percentage?

MR. EISENBERG: I don't know.

JUDGE SARRICA: She said most of the time she was a chambermaid.

Is there a problem here?

MR. EISENBERG: No, Your Honor.

JUDGE SARRICA: Continue then.

MR. EISENBERG: I'll withdraw the question.

JUDGE SARRICA: Thank you.

MR. SCHWARTZ: Thank you both.

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Q Did you hear Mrs. Hagler say something?

A Yes.

Q And can you tell us what that was?

A Steven asked Mrs. Hagler what would happen about the votes, and Steven didn't want to vote, he didn't want to vote one way or the other because he didn't want to hurt either parties, he said. And he said what would happen, and Mrs. Hagler said that a boss could make it difficult.

Q That's all? Were those her words?

A Yes.

Q Did you ever sign any membership document for Local 4?

A No.

Q Did you ever at any time meet a Local 4 delegate?

A Yes.

Q Can you say when the first time you met a Local 4 delegate was?

A I think it was November.

Q That was the first time?

Q Where were you when you met a Local 4 delegate?

A In the dining room.

Q Who was present in the dining room at this time?

A It was a meeting. There were a number of the employees there.

Q Was anybody there from Local 4?

A Mr. Gulino.

Q Was there anyone else?

A Yes.

There was another gentleman with him. I don't recall who he was.

Q Did Mr. Gulino talk to the employees at this meeting?

A Yes.

Q Do you recall what he said?

A He was going to negotiate with Mr. Hagler, but he couldn't start negotiating until we stopped fooling around with 1115.

Q Did he say anything about dues or initiation fee?

A No.

Q Did you attend other meetings?

A Pardon?

Q Did you ever attend any other Local 4 meetings?

A Yes.

Q Can you tell us when they occurred, Local 4 meetings?

A I think there was another in December, but I'm not sure.

Q Did Mr. Gulino say anything about dues or initiation fee --

MR. REICH: Objected to as leading.

JUDGE SARRICA: Sustained.

A I asked Mr. Gulino about --

Q The objection was sustained.

A Oh, I'm sorry.

Q Did Mr. Gulino say anything at this otehr meeting?

A At the second meeting?

Q Right.

A I asked Mr. Gulino about --

MR. SCHWARTZ: Objection. The question was --

JUDGE SARRICA: I'll direct the witness to answer the question, which is what did Mr. Gulino say.

THE WITNESS: He said many things.

Q Could you tell us what they were?

A I asked him about --

MR. SCHWARTZ: Objection.

JUDGE SARRICA: You're giving what you said. The question is what did he say.

THE WITNESS: Well, he answered my question.

JUDGE SARRICA: All right.

What was the answer.

THE WITNESS: The dues were for him representing us.

Q What did you ask him?

A I asked him what was the six dollars dues for.

Q I see.

MR. EISENBERG: I ask that this card be marked for identification as General Counsel's 16.

MR. EISENBERG: I believe I did.

JUDGE SARRICA: What was this?

MR. REICH: I made a comment on the side that I don't believe counsel established when the first deduction was made.

JUDGE SARRICA: My question is this: whether or not that was not stricken when--when I ruled on the first objection--

MR. EISENBERG: I see.

JUDGE SARRICA: -- and therefore would need to be developed.

Q When was the first time six dollars was deducted from your pay?

A In November of 1974.

Q All right.

Did there come a time-- Did there ever come a time when you knew what that six dollars was, Mrs. Gruenke?

MR. SCHWARTZ: Objection.

JUDGE SARRICA: What is the basis?

MR. SCHWARTZ: She stated that six dollars for union dues were taken out from her pay from November to February, once a month.

She already answered that question, it was six dollars--

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JUDGE SARRICA: He is requesting the basis of her knowledge, what it is.

MR. REICH: The question is, did there efer come a time when she knew what it wa_, and we already established she knew what it was.

If he wants to repeat that, I would have no objection to her saying yes or no, but beyond that, I am goi to be heard from.

JUDGE SARRICA: Will you rephrase your question, Counsel?

MR. EISENBERG: Yes.

Q (By Mr. Eisenberg) Did you ever speak to anybody concerning the dues deduction?

A Yes.

Q Who?

A Mr. Hagler and Bobby the bookkeeper and Mr. Gulino.

Q When did you speak to Mr. Hagler?

A The following month, December.

Q What did you say to him and what did he say to you?

A I asked Mr. Hagler what the six dollars union dues were for and he just told me for the union.

Q Did there ever come a time when you received a check from Gloria's Manor which was other than your

salary?

A Yes.

Q Can you tell us when this was?

MR. REICH: We stipulated to that, didn't we?

MR. SCHWARTZ: Yes.

A In February.

Q How did you get this check?

A Mrs. Abernathy brought it to me.

Q Where were you when you received the check?

A I was home.

Q How much was the check, this check?

A Twenty-four dollars.

Q Did Mr. Hagler ever speak to you about the dues refund--the check?

MR. SCHWARTZ: Objection.

JUDGE SARRICA: Sustained.

Q (By Mr, Eisenberg) At any time after you received the check, did you ever come into contact with a Local 4 delegate?

A Yes.

Q Do you recall when this was?

A March 3rd.

Q Do you remember when you received the check, the date?

A Not specifically.

MR. SCHWARTZ: That question was asked and answered.

She was asked when did she receive the check.

She said I received the check in February from Mrs. Abernathy.

JUDGE SARRICA: Is there anything further along that line you wish to develop?

MR. EISENBERG: I just want to establish the time frame when she received the check and when she had a contact with a Local 4 delegate.

MR. SCHWARTZ: You asked that question already.

JUDGE SARRICA: I will sustain the objection.

Q (By Mr. Eisenberg) How did you happen to speak to a Local 4 delegate?

MR. REICH: That is objected to.

It calls for an operation of the witness' mind, and--

JUDGE SARRICA: Link it to events.

Q (By Mr. Eisenberg) Can you describe the events as to how you came incontact with a Local 4 delegate?

A Yes.

Q Please do so.

A I was called to the front desk by the switchboard operator and I picked up the phone on the floor and asked if it were one of my children. She said no. I asked if she knew who it was. She said no, to come to the front desk.

Q Did you go to the front desk?

A Yes.

Q What happened?

A There was a gentleman there. I did not recall ever seeing him before. And he said--I believe he said he was from Local 4 and I asked him if he had a business card.

He said he did not. And then he prodeeded to say I owed him $71, and I--I was upset about it because it--

MR. SCHWARTZ: Objection.

JUDGE SARRICA: Sustained.

MR. REICH: Move to strike.

JUDGE SARRICA: Strike it.

Q Did this Local 4 delegate give you his name?

A I believe he did but I did not recall it.

Q Could you tell us what he said to you and what you said to him?

MR. REICH: Maybe he dan be identified, in some fashion, if the witness cando so, beyond the

description heretofore referred already given.

MR. EISENBERG: I will withdraw the question.

Q Do you know who this individual was?

A Yes.

Q Who?

A Mr. Fineguerra. I think it is Fineguerra.

Q What did he say to you and what did you say to him?

A He asked me my name, and he told me I owed him $71. I asked him for what, and he said initiation fee and union dues.

Q Did he say anything about the $71 other than what you testified to?

A No; initiation fee and union dues, $71 is for.

Q Did you say anything else to him?

A He said I did not know what he was talking about.

Q What did he say?

A I don't recall exactly.

Q Did you say anything else that you can remember.

MR. SCHWARTZ: She answered she doesn't recall.

Objection.

JUDGE SARRICA: We have gotten one more, now we will see if there is another one.

MR.. SCHWARTZ: You are very generous, Judge.

A I can't recall at this time.

Q Did he ask you to sign anything?

MR. SCHWARTZ: She answered twice when he asked her anything else, and she said she doesn't recall, your Honor.

JUDGE SARRICA: Overruled.

A He had a sheet of paper.

Q Did he ask you to sign anything?

A Yes.

Q Did he show you the piece of paper?

A He held it in his hand.

Q Did you read it?

A No.

MR. SCHWARTZ: Objection; that was not that was not the question he asked her, and that was not the answer responsive to the question.

I move to strike it.

JUDGE SARRICA: I want to hear the question and the answer.

(Record read by reporter.)

JUDGE SARRICA: Overruled.

Will you answer?

THE WITNESS: I am sorry; what was the question?

JUDGE SARRICA: You were interrupted in the middle of your answer: do you want to complete it?

THE WITNESS: He held the paper in his hand, so I did not read it but he said it was from Local 4.

MR. SCHWARTZ: Objection.

MR. EISENBERG: Excuse me. I did not hear that. What did he say about the paper?

THE WITNESS: It was from Local 4.

Q (By Mr. Eisenberg) Did he characterize it in any other way?

A I don't recall.

Q What time of day was this?

A Maybe about 2:15, in that area.

Q Did you finish speaking to him, Mr. Fineguerra?

A Yes.

Q What did you then do?

A I went back to work.

Q You testified that you were discharged on this day; is that correct?

A Yes.

Q Who discharged you?

A Well, it was really undecided. It was between Mr. Fineguerra and Mr. Hagler.

Q Did you come in contact with Mr. Fineguerra and Mr. Hagler later that day?

A Yes.

Q Can you describ e the events as to how that came

about?

A Well, we were called over the loudspeaker to go to Mr. Hagler's office.

Q Who do you mean "we"?

What did you hear?

A Mrs. Abernathy, Maria De La Paz, and myself.

Q What time of day was this?

A About 4:00.

Q What did you do?

A We went to Mr. Hagler's office.

Q Was anybody present in Mr. Hagler's office when you arrived?

A Yes.

Q Who?

A Mr. Fineguerra and Mr. Hagler.

Q How long were you in Mr. Hagler's office?

A I think about 15 minutes.

Q Was anybody else there during the course of this fifteen minutes' time?

A Yes.

Q Who?

A Mrs. Abernathy, Maria De La Paz, Mrs. Curry, Willie Cleary and myself.

Q Did Mr. Hagler say anything at this time?

A Yes.

Q What did he say?

A He was sorry that he was informed by the union that he would have to discharge us and he had gotten in touch with his lawyer and his lawyer told him this was what he had to do.

Q Did he say anything else that you can remember?

A He said he wasn't discharging us and Mr.--

Q Did he say who?

A Pardon?

Q Did he say who?

A That the union was.

Q Did he say why you were being discharged?

A We did not pay union dues.

Q Did any of the employees say anything about this that you did not pay union dues?

A Yes, I said I did pay my union dues, and Mr. Fineguerra said he did not see them, and I asked Mr. Hagler if Mr. Fineguerra did not receiv e them, who was responsible for them, that had been taken out of my salary from November and Mr. Hagler said he repeatedly tried to make Local 4 acceptable to them and they did not.

MR. SCHWARTZ: Will you read that last part back, please?

(Record read by reporter.)

Q Do you recall if anything else occurred or was said by anybody who was at that meeting?

A Well, yes. We asked Mr. Hagler for a slip for unemployment and Mrs. Abernathy went and read by the time clock something from the unemployment office or the Labor Board that stated, if you are fired from your job you have to have a slip going to unemployment and we asked Mr. Hagler for this and Bobby, the bookkeeper, said--she came in and she said she would take care of it and she did for Anne Donnegan, not to worry about it, and Mr. Hagler made--again he was not firing us, he did not want to see you--see us go, then we asked if we could clock in in the morning and he said no.

Q When you first saw Mr. Fineguerra that day, did he say anything to you about your employment status?

A No.

MR. EISENBERG: I have nothing further, your Honor.

MR. REICH: The request is respectfully made for all written statements in the possession of General Counsel given by this witness.

(Mr. Eisenberg handing document to Mr. Reich.)

MR. REICH: The request is hereby made for a short recess to give us an opportunity to study this.

JUDGE SARRICA: Very good.

Let's take a 15-minute recess.

MR. REICH: Very good, Judge.

(Whereupon, a 15-minute recess was taken, commencing at 12:00 a.m.)

(Whereupon, at 10:30 o'clock a.m., the proceedings reconvened.)

JUDGE SARRICA: Back on the record.

CROSS EXAMINATION

Q (By Mr. Schwartz) Is your first name Mary?

A Yes.

Q Would you prefer me calling you Mary Joan or Mrs. Gruenke?

A Pardon me?

Q How would you prefer I address you, Mary Joan or Mrs. Gruenke?

JUDGE SARRICA: Let's leave it as Mrs. Gruenke here in the formal proceedings.

MR. SCHWARTZ: All right.

Q (By Mr. Schwartz) Mrs. Gruenke, I show you--

MR. SCHWARTZ: May we have this marked for identification, please?

(Thereupon, the document referred to marked Respondent Employer's Exhibit 5 for identification.)

Q (By Mr. Schwartz) Mrs. Gruenke, I show you

A Nobody told me that: it was taken out.

Q You knew they could not do this, isn't that true?

A No.

Q Did you speak to any other employees about the dues being taken out of your pay?

A Oh, yes.

Q And they all were complaining?

A Yes.

Q And they all said that they were not authorized to do this?

A No.

Q Nobody said that?

A No.

Q You never signed a dues authorization slip, did you?

A No.

Q You signed nothing for Local 4, did you?

A Yes, I did.

Q What did you sign for Local 4?

A I signed a petition.

Q What was that petition for?

A That we were going to go with Local 4 and have 1115 stop harassing us.

Q Was 1115 harassing you?

A Evidently that is how it was classified.

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Q No. I ask you whether 1115 was harassing you; do you know what the word "harass" means?

A Yes.

Q What does it mean to you?

A Annoying.

Q Was Local 1115 annoying you?

A I di d not consider it as that.

Q You did not consider it--

A No.

Q Were they doing anything to you that you did not like?

A No.

Q Why did you sign the petition?

A Because we were-- We were anxious to get better benefits in A and we were told we would but we would have to sign that 1115 was not to harass any more.

Q You signed something that you knew was not true; right?

A [illegible]

Q Local 1115 was harassing you?

A It wasn't me, personally.

Q It wasn't you personally?

A No.

Q But you personall signed, did you not?

A Yes, I was one of the employees.

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Q Pardon me?

A I was one of the employees.

Q And the petition said that you did not want Local 1115 to harass you and you knew that was not true when you signed it?

A Not so.

Q They were harassing you; is that what you are saying?

A No. I am saying that is not true.

Q What is not true?

A What you stated.

Q You signed a petition saying you did not want Local 1115 to harass you; is that true?

A (Witness nods head.)

Q Please don't nod;just say yes or no so the Court Reporter can hear it.

A I did sign it.

Q Yes.

And you testified a moment ago that 1115 was not harassing you; is that true?

A Personally, no.

Q Now did you ask Mr. Hagler why dues were being deducted from your paycheck?

A Yes.

Q And he told you that under the contract that is

what the contract required, that dues be deducted, did he tell you that?

A No.

Q Did he tell you that this was a requirement from the union?

A No.

Q Now you did receive a check from the company which stated it was a return of union dues that were deducted from your pay for the months of November to February; is that correct?

A Yes.

Q And you never asked Mr. Hagler what this money was for because you knew; is that true?

A It was written on the check.

Q I said you did not ask Mr. Hagler what this was for because you knew?

A Yes.

Q All right.

You did not say anything to Local 4 about the fact that the dues were returned; did you?

A No.

Q So at this point you knew that you had not paid any dues to Local 4 at this point; is that correct?

A No.

Q When you got--received the money back, everything

that was deducted from your pay for Local 4 dues was returned to you, was it not?

A Yes.

Q So at that point you had paid nothing, after you had received the money from the respondent company, after you received this money from the respondent company about refunding the dues, you knew at this point, you personally had not paid any money for dues or initiation fee to the union; is that true?

A No.

Q You had paid something?

A Yes.

Q What did he pay?

A My dues.

Q You paid dues?

A Yes.

Q How did you pay the dues?

A I still have the check. It was just a piece of paper.

Q But that money was returned to you, was it not, Mrs. Gruenke?

Yes or no.

A Yes.

Q Do you recall your testifying about asking Mr. Hagler about medical coverage?

A Yes.

Q Do you recall Mr. Hagler saying to you that there was a doctor that was affiliated with the home and that if you needed medical aid or assistance, he would have this doctor assist; do you recall that?

A Yes.

Q All right.

You recall that?

A You refreshed my memory; I recall it.

Q So that your statement to Mr. Eisenberg about loaning you money was not true, was it? He offered you medical assistance via the doctor; is that correct?

A It was true.

Q It was true?

A Yes.

Q You did not tell Mr. Eisenberg that Mr. Hagler had offered you medical assistance, did you, you left that out, did you not?

A Not intentionally, I didn't.

Q I did not ask you that. I said you left it out.

A At that time, yes.

Q At the time that you were hired, who interviewed you?

A Pardon?

Q At the time of your hire at Gloria's Manor, who

interviewed you?

A Mr. Hagler.

Q Did he explain to you that there was a union who was the bargaining representative by the name of Local 4 in the place?

A No.

Q He mentioned nothing about Local 4?

A He mentioned he was having problems.

Q I did not ask you that.

I asked you did he mention nothing about Local 4.

A By name, I don't recall.

Q He could have.

Q Did he tell you that there was a contract with Local 4?

A No.

Q Did he tell you that you would have to become a member of Local 4?

A No.

Q You did not-- You know-- As far as you were concerned there was no union in Gloria's Manor; is that what you are saying to me?

A I did not know.

Q And he said nothing to you about a union?

A He did.

Q What did he tell you?

A He said there was problems with your unions, one union was there, the other union was trying to get in there.

Q One union was there.

A Right.

Q Did he mention the name of the union?

A No.

Q You did not ask him?

A No.

Q But he told you that it was--there was a union there?

A Yes.

Q So that you knew there was a union there?

A No, I did not.

Q When he told you that there was a union there, this did not mean anything to you?

A No.

Q It meant nothing?

A No.

Q Nothing?

A No.

Q Did you ever work in any other place prior to coming to Gloria's Manor?

A Yes.

Q Where?

A People's Trust of New Jersey.

Q Where?

A People's Trust of New Jersey.

Q Was there a union there?

A No.

Q Did you ever work in anh establishment where there was a union?

A No.

Q You never did before?

A No.

Q Did you speak to any employee at the time of your hire after you were hired, about whether or not there was a--Local 4 was a union in the--

A No.

Q (Continuing) -- in the place?

A No.

Q When was the first time that you learned that Local 4 had a contract with Gloria's Manor?

A I believe when I signed the first card for Anne Donegan.

Q Pardon me?

A I believe when I signed the card for 1115 for Anne Donnegan.

Q And when was that?

A In the end of August.

Q When did you start working?

A The middle of August.

Q Middle of August?

A Yes.

Q Would you say after two weeks that you were there--

A Approximately.

Q -- you learned that there was a union and the union was Local 4 and Local 4 had a contract with Gloria's Manor; is that right?

A That's right.

Q And you found out who your shop steward was at that time?

A Yes.

Q And who was it?

A Donald O'Toole, I believe.

Q Did he speak to you?

A No.

Q Never said a word to you?

A No.

Q Who told you that Donald O'Toole was the shop steward?

A Annd Donnegan.

Q And that was the time--the first tine that you learned about the contract?

A Yes; about Local 4, she did not mention a contract.

Q She did not mention a contract?

A No.

Q What did she tell you about Local 4?

A She said they were paying six dollars a month and they were getting no benefits.

Q Did she tell you what six dollars per month-- Did you ask what she meant by six dollars per month; was that dues?

A Dues.

Q So at that time you knew you were going to have to pay six dollars a month dues to Local 4; is that right?

A No.

Q Oh, you were not going to have to pay anything?

A I did not know.

Q When she told you that she was paying six dollars a month, did it mean that all the other people were going to pay six dollars a month dues?

A I did not know.

Q You did not know. You did not ask her?

A No.

Q And you had no idea that you were getting to be obligated to pay six dollars a month dues, too?

A I assumed I would be.

Q Oh, you assumed you would be?

A Yes.

Q And you did not bother to find out--I withdraw that.

Now, on March 3, you were told approximately two o'clock or two-thirty, according to your testimony, by a representative of Local 4 that you had owed--that you owed dues; is that correct?

A No.

Q That is not correct?

A No.

Q He did not ask you for dues?

A Initiation fees and dues.

Q Oh, initiation fees and dues?

A Yes.

Q And you did not pay it, did you?

A Pardon?

Q You did not pay it to him, did you?

A No.

Q You did not offer to pay him, did you?

A No.

Q In fact, you refused to pay anything; isnt that true?

A Yes.

Q Yes or no.

A Yes; all right.

A May I retract that question?

JUDGE SARRICA: Retraction, all right.

A Because "no" would be correct.

Q Pardon me?

A No, I did not refuse.

Q You did not refuse?

A No.

Q Did you make an offer?

A I did not think I owed it.

Q Oh, you did not think you owed it?

A No.

Q I see.

Notwithstanding that the money that was deducted from your pay for dues was returned to you by Mr. Hagler?

A No, I did not owe it.

Q You did not owe it?

A No.

Q You had paid dues?

A Yes.

Q Who did you pay dues to?

A They were withdrawn from my salary.

Q But that money was returned to you, Mrs. Gruenke, wasn't it?

A I received a check.

Q And you cashed the check, did you not?

A Not at that time.

Q Ultimately you cashed a check--

A Yes.

Q -- did you not?

A Yes.

Q You never came and offered to make--to pay this money back to either Local 4 or Mr. Hagler, did you?

A No.

Q All right.

Now, later that day you were summoned into the office of Mr. Hagler and there was a representative I think you said of Local 4 present.

What did Mr. Hagler say to you? Anything?

A Not directly.

Q Did he say anything to the employees which you were one of in the room?

A Yes.

Q What did he say?

A He said I believe he was ordered by the union to dismiss us. He had contacted his lawyer and on his lawyer's advice he was doing so.

Q Did he tell you he had a letter from his lawyer?

A He had a letter. I don't recall whether it was from Local 4o or from his lawyer.

Q But this is not what you told Mr. Eisenberg; is it?

A That is possible because I don't quite recall the letter.

Q Well, did you tell Mr. Eisenberg that he had a letter from the union?

A I don't recall.

Q Or a letter from his lawyer?

A I don't recall.

Q You don't recall?

A No.

Q All right.

A I'm sorry.

Q Did Mr. Hegler tell you to pay the dues?

A No.

Q Did he tell you to sign--

A No

Q I haven't even finished.

A I'm sorry.

Q -- a authorization card deducting dues--

A No.

Q -- for Local 4?

A I'm sorry.

Q Did he say that all of you employees were good workers and he had hoped you would straighten this matter out

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with Local 4?

A He did say--

Q No. I asked you if he said that.

A I don't recall him saying that.

Q Did he say that in substance?

A I don't recall it.

Q You testified for Mr. Eisenberg and your recollection was very good and now you find that your recollection is not so good, you don't recall Mr. Hagler saying to you that he wanted you people to straighten out this matter with the union and he wanted to retain you people working here; didn't he say this in substance, to you?

A No.

Q What did he tell you? What can you recall him saying to you?

A When we went to the office--

Q Pardon me?

A When we went to Mr. Hagler's office--

Q I hope we are talking about this Mrs. Gruenke. I have been on it for 15 minutes. I am talking about March 3, 1975--

JUDGE SARRICA: Mr. Schwartz.

Q -- in Mr. Hagler's office.

JUDGE SARRICA: Mr. Schwarts, I will permit her to answer that question.

Will you--

Will you please read it to her and then--and her partial answer?

(Record read by reporter.)

JUDGE SARRICA: When we went to Mr. Hagler's office.

A (Continuing) Mr. Hagler said he was sorry, that we were all good workers, and he did not want to fire us, but he had a letter--I don't recall whether the letter was from his lawyer, but I imagine it would have to be from Local 4 because he said he had called his lawyer and his lawyer informed him that he would have to fire us, because we had not paid union dues.

Q He mentioned--

JUDGE SARRICA: Is your answer complete now?

THE WITNESS: Pardon me?

JUDGE SARRICA: Is your answer to that question complete of what you recall occurred in that office?

THE WITNESS: I said we had paid union dues. Mr. Fineguerra said he had never received them.

MR. SCHWARTZ: Just a minute. I am only asking about the conversation that she had with Mr. Hagler.

Q (By Mr. Schwartz) Do you recall telling Mr. Eisenberg on March 14, 1975 that Mr. Hagler had a letter from his lawyer on March 3, 1975, while you were

AFTER RECESS

1:50 o'clock P. M.

JUDGE SARRICA: Back on the record.

Mr. Eisenberg?

MR. EISENBERG: General Counsel calls Wanda Sullivan.

JUDGE SARRICA: Raise your right hand, please?

(Mrs. Sullivan complies.)

Whereupon,

WANDA SULLIVAN,

called as a witness, having been first duly sworn, was examined and testified as follows:

JUDGE SARRICA: Be seated,please.

DIRECT EXAMINATION

Q (By Mr. Eisenberg) Mrs. Sullivan, will you please state your name, spell it, and give your address for the record?

A My name is Wanda Sullivan, W-a-n-d-a, S-u-l-l-i-v-a-n. 130 Beach 121st Street, Rockaway Park.

Q Mrs. Sullivan, did you work for Gloria's Home for Adults?

A Yes, sir.

Q When were you hired?

A I was hired in August 1974.

Q And did there come a time when you were discharged?

A No, sir.

Q You were never discharged?

A Oh, yes; March. I thought--excuse me, I thought in between. March.

Q Do you remember the date that you were discharged?

A March 5, 1975.

Q Thank you.

What was your job at Gloria's?

A A waitress.

Q How many days a week did you work?

A Five.

Q How many hours a day?

A About 45-- A day or a week?

Q A day.

Q Nine hours a day.

Q Did there come a time during the course of your employment when you noticed a deduction from your pay that you had not previously noticed?

A Yes.

Q When was that?

A The first payment was taken October--October.

Q How much was deducted from your pay?

A Six dollars.

Q Was six dollars deducted at any subsequent time from your pay?

A Yes.

Q When was six dollars deducted from your pay?

MR. SCHWARTZ: Objection. Just asked and answered.

JUDGE SARRICA: Subsequently he asked.

Q (By Mr. Eisenberg) When, can you tell us when six dollars subsequently was deducted from your pay?

A Once a month.

Q What month?

A October; November and December in 1974, and then January and February of 1975.

Q Do you know what these deductions were?

A Union dues.

Q How did you know that?

A Because I was told;I went to the bookkeeper's office and the bookkeeper told me, Bobby.

Q When was this?

A When it was taken in October, the first payment.

Q All right.

Did you speak to anybody else about it?

A No.

A It was mentioned to me--

Q Mrs. Sullivan, I show you General Counsel's Exhibit 7, in evidence, consisting of two pages.

Did you sign either one of those pages (handing to witness)?

A (Witness examines documents) Yes, sir.

Q Is that your signature?

A Yes, sir.

Q How did you happen to come to sign that?

A This is for Local 4.

Q Who gave that to you?

A Miss Kay Curry.

Q Were you-- Where were you when she gave it to you?

A I was working at that time in Gloria's Manor.

Q Where in Gloria's Manor?

A In the dining room.

Q When you signed it?

A As far as I can remember maybe November or December; I don't remember exactly.

Q Did you fix a date when you signed it?

A No. No,sir.

Q Is the date which appears next to your name your writing?

A That is my writing, yes.

Q Did you affix a date to it?

A No. Kay Curry put that.

MR. REICH: What was that last answer, sir?

MR. SCHWARTZ: Kay Curry.

Q (By Mr. Eisenberg) What on that document is your signature?

A W. Sullivan.

Q And you did not write down the date, did you?

A No.

Q Did you see Mrs. Curry write down the date?

A No..

MR. EISENBERG: I would like this card to be marked for identification as General Counsel's Exhibit 19.

(Thereupon, the document referred to marked General Counsel's Exhibit 19 for identification.)

Q (By Mr. Eisenberg) Mrs. Sullivan, I show you--withdrawn.

JUDGE SARRICA: Show it to counsel.

MR. EISENBERG: Yes, your Honor.

(Mr. Eisenberg handing document to Mr. Schwartz and Mr. Reich.)

MR. REICH: All right; thank you.

Q (By Mr. Eisenberg) Mrs. Sullivan, I show you what has been marked for identification as General Counsel's Exhibit 19.

Can you identify that document, Mrs. Sullivan?

(Handing document to witness.)

A (Examining document) Yes, sir.

Q What is that?

A That is for Local 1115.

Q Is your signature-- Does your signature appear on that document?

A Yes, sir.

Q Did you sign that document?

A Yes, sir; I did.

Q Is all the writing on that document your writing?

A No, sir.

Q What writing on that document is your writing?

A Just my signature.

Q And where does that appear on the document?

A Two places (indicating).

M R. EISENBERG: Let the record show that the witness was pointing to the signature on the top right hand part of the document.

Q Do you remember when you signed that document, Mrs. Sullivan?

A January or February. I don't remember exactly the month.

Either January or February.

Q Who gave you that card?

A Kay Curry.

Q Where were you when she gave it to you?

A Gloria's Manor.

Q Did you -- Can you describe the card at the time she gave it to you?

A You mean this card?

Q Did it have writing on it?

A Yes.

Q What was written on it?

A Well, whatever is printed and I did not see it because I did not have any glasses with me and then I was asked to sign the signature, put the signature.

Q Did you see writing on that card before you signed it?

A Yes--other workers, not this card.

Q This card?

A No.

Q You did not see anybody write on it before you signed it?

A No, it was blank.

Q I am referring to this card. When you were handed this card at the first moment, was there any writing on it before you signed it?

A No; just the print, no handwriting.

Q I see.

Did you see anybody put any handwriting

on that card?

A No.

Q Did Mrs. Curry say anything to you when she gave you the card?

A Yes; she told me it is for 1115 Union.

Q When she told you that, what did you then do?

A I signed my name and then I told Mrs. Curry that I did not have the glasses to fill the rest out, so she filled it out for me.

Q You saw her put handwriting on the card?

A No.

MR. SCHWARTZ: Objection.

A I didn't pay no attention. I walked away.

Q Oh, I see.

MR.EISENBERG: I offer this card in evidence, your Honor, as General Counsel's Exhibit 19.

JUDGE SARRICA: Any objection?

MR. REICH: May I be informed of the purpose of the offer?

JUDGE SARRICA: Do you want to respond?

Have you any limitation on the purpose of the offer?

MR. EISENBERG: No.

JUDGE SARRICA: Mr. Reich?

MR. REICH: I object to it as immaterial for any purpose other than as a specimen of the witness'

signature. The witness has testified that the only thing that she did was sign a card which she could not read because she did not have glasses and doesn't know what it is all about, and if it is being offered for the purpose of signature, then it is immaterial to the issues in this case,as of this moment, at any rate.

JUDGE SARRICA: Mr. Schwartz, any position?

MR. SCHWARTZ: It sounds like a very good argument and I will adopt it.

MR. REICH: I am persuaded.

MR. SCHWARTZ: It sounds very persuasive.

JUDGE SARRICA: All right.

General Counsel's Exhibit No. 19 is received in evidence.

(Thereupon, General Counsel's Exhibit 19 for identification, received in evidence.)

MR. REICH: With appropriate exceptions, your Honor.

JUDGE SARRICA: What?

MR. REICH: With appropriate exceptions.

JUDGE SARRICA: Your exceptions are noted.

Q (By Mr. Eisenberg) At any time prior to your discharge had you ever come in contact with a representative of Local 1115?

A Yes, sir.

Q How many times?

A Once.

Q Where were you when you came into contact with a Local 1115 delegate?

A We have a meeting.

Q Where were you?

A Rogers Hotel.

Q When was th is meeting?

A I believe January or February of 1975.

Q And who was present at this meeting?

A Kay Curry, Mary Abernathy, Joanny, Billy, Barbara Davis, and Ann Donnegan, John Breen, Nora, she is a waitress there, and Rita, she is another waitress, that is about all I remember.

Q Where did you meet the Local 1115 delegate?

A In Rogers Hotel.

Q Who was that delegate?

A Mr. Morales.

Q How did you happen to be at that meeting?

A I was asked.

Q Who asked you?

A Kay Curry.

Q Where were you when she asked you?

A At Gloria's Manor.

Q Where in Gloria's Manor?

A The dining room .

Q What did she say to you at that time?

A That we going to have a meeting with the 1115.

Q Did there ever come a time when you were given a check--

A Yes.

Q -- from the employer?

A Yes, sir.

Q Do you remember when that was?

A March the 5th--no, excuse me. February 24th.

Q Where were you?

A I was in Gloria's Manor working.

Q Where in Gloria's Manor?

A Dining room, on the job.

Q Did anybody give you a check?

A Yes, sir.

Q Who was that?

A Mr. Hagler.

Q Where were you when he gave you the check?

A Well, like I say, I was wrking and I was called to the office.

Q What did you do?

A Well, I went in and--and Mr. Hagler gave me a check.

Q How much was this check?

A Thirty dollars.

Q Did Mr. Hagler say anything to you?

A No; he did not say anything to me, but I did, I said, "What's this for," and Mr. Hagler said to me that it is theunion money being returned.

Q What did you do?

A I said "Thank you," and I went out.

Q Did Mr. Hagler say anything else to you?

A No; not that I recall.

Q Did you know what that check was?

A Well, Mr. Hagler told me it is from the union dues.

Q Did there come a time after you received the check that you came in contact with a Local 4 delegate?

A Yes, sir.

Q And when was this?

A I believe it was in February.

Q After you received the check did you come in contact with a Local 4 delegate?

A Yes, sir; a couple of weeks later, I believe it was.

Q Do you remember the date that you came in contact with a Local 4 delegate?

A Yes, sir; March 5.

JUDGE SARRICA: March what?

THE WITNESS: March 5.

JUDGE SARRICA: Fifth?

THE WITNESS: 5th, yes.

Q (By Mr. Eisenberg) How did you happen to come into contact with-- Withdrawn.

Can you describe the events that took place whereby you came in contact with a Local 4 delegate?

A I was in the dining room waiting to go back to work and my name was mentioned on the loudspeaker to report to a front desk, switchboard.

Q What time of day was this?

A It was about 4:15.

Q What did you do when you heard your name on the loudspeaker?

A I went to the front desk.

Q What happened when you got to the front desk?

A And I saw a fellow, I believe his name is Henry, standin- by the desk with the white paper.

Q Had you ever seen this individual before?

A I think I saw him once.

Q Did this individual say anything? Did Henry say anything to you?

A Yes, sir. He had a white paper in his hand and he says to me, "You owe me $71, and sign these papers."

Q What did you say?

A I turned around and I says to him, "I don't owe him

any money, and I am not signing the paper." And with that, Mr. Hagler was coming towards us--

Q Is that all you said to him?

A Yes.

Q Did he say anything about what the $71 was?

A He said it is for the union.

Q Did he say anything else?

A Nothing I recall.

Q Excuse me?

A Nothing that I remember.

Q Did he say anything about dues or initiation fee?

A That is what he said. It is for the union dues.

Q Do you remember what his words were?

A I think that is what he said, if I am not mistaken, sir.

Q Did he say anything about initiation fee?

MR. REICH: Objected to as leading.

A I don't think he mentinned that to me.

MR. REICH: Withdraw the objection, your Honor.

A (Continuing) He say "This is for the union."

Q Did you say anything else to him?

A No, because he saw Mr. Hagler coming towards us and he said to Mr. Hagler, "I want you to remove this

woman from the job right now.

Q Where did this take place?

A Front desk, by the switchboard.

Q Did Mr. Hagler say anything?

A Mr. Hagler told me to go and punch out.

Q And did you do that?

A As I was going to punch out, Mr. Hagler told me, and asked me to work--finish that day for dinner, to work for dinner.

Q Did you do that?

A Yes, sir.

Q Wnt did you then do?

A Then I finished my day and Mr. Hagler saw me and he saw--he told me to stop in the office for a minute before I leave.

Q Did you do that?

A Yes, sir. I went to the office and Mr. Hagler had my check for the rest of the week.

Q Did he say anything to you?

A And he--I did ask Mr. Hagler what is going on and he said "I don't know, that's the union," that's how he said it.

MR. EISENBERG: Could that be read back, please?

THE WITNESS: I--

JUDGE SARRICA: All right.

Will you please read--reread the witness' answer.

(Record read by reporter.)

Q Before Mr. Hagler arrived did you say anything else to Mr. Fineguerra and did he say anything else to you?

A No, sir.

MR. EISENBERG: No further questions.

MR. SCHWARTZ: Do you have a statement, or statements?

MR. EISENBERG: Before I do that, I have one further question.

Q (By Mr. Eisenberg) Mrs. Sullivan, at any time prior to March 5, had any Local 4 delegate asked you or--asked you in any way for an amount of money for the union?

A Yes, sir.

Q Well, when was this?

A March the 5th.

Q Prior -- Before March 5?

A (Witness shakes head.)

Q Is your answer-- What is your answer. You shook your head.

A No.

MR. EISENBERG: Nothing further.

(Mr. Eisenberg hands documents to Mr. Schwartz.)

JUDGE SARRICA: How long is it?

MR. SCHWARTZ: Six pages.

JUDGE SARRICA: Is ten minutes sufficient-- Do you need more than that?

MR. REICH: We are in good practice now. We can read it in ten minutes.

JUDGE SRRICA: I thought it was short.

We will recess for ten minutes.

(Whereupon, at 2:14 o'clock p.m., the hearing recessed, to reconvene at 2:25 p.m., the same day.)

JUDGE SARRICA: On the record.

Cross examination.

CROSS EXAMINATION

Q (By Mr. Schwartz) Is it Miss or Mrs?

A Mrs.

Q Mrs.?

A Yes.

Q Mrs. Sullivan, at the time you were hired in August 1974, did Mr. Hagler tell you that there was a union local, No. 4 that had a contract with his company?

A The day I started, I guess before the week was over, I heard there was a union there, but not the day that I started.

Q But at the time you were hired did he mention anything about there was a unnion in the shop--in the home?

A It was mentioned to me--

Q Did he mention it to you at the time you were hired?

A Later on. Maybe a week passed by.

Q Did he tell you that he had an agreement with Local 4?

A Yes.

Q Did he tell you that there was another union trying to get in?

A Yes.

Q Did he tell you or did he not tell you that it was up to you to make up your mind whether you wanted to join the union or not join the union?

Did he tell you it was up to you--

A No.

Q -- to decide?

A No, he did not say that.

Q He did not-- He did not say anything.

After-- Shortly after your hire, you received a raise, did you not?

A I was there I believe a day or two when I got the raise right away; yes.

Q All right.

Did you work some place else prior to coming to work at Gloria's Manor?

A Before, yes.

Q Where did you work before?

A At Promenade Nursing Home.

Q Was there a union there?

A Yes, sir.

Q And were you required to join the union?

A Yes, sir.

Q And did you pay dues?

A Yes, sir.

Q Did you pay initiation fee?

A Yes, sir.

Q Was that taken out of your pay each and every month?

A Every month it was taken out.

Q Were you required to give an authorization permitting the company to deduct?

A Yes.

Q To deduct the money from your wages?

A I signed the first card, what I paid $25 to join the union.

Q That was where you worked before?

A Yes.

Q All right.

Is it not true that the bookkeeper here at Gloria's Manor gave you a card to sign for Local 4?

A I received the card, it is true I received a card--

Q Mrs. Sullivan, if you listen to the question and give me the answer that I want to the question, I would be very happy.

I asked you did the bookkeeper give you a card to sign for Local 4.

A But I would like to explain when I got the card.

Q I just want to know whether she gave you one.

A She did; yes.

Q You did not sign it, did you?

A No.

Q And you knew the card, the purpose of the card was to permit the company to deduct wages--money from your wages for the union dues, did you not?

A Yes.

Q All right.

Now, when you first discovered dues being deducted from your wages, you had a conversation, did you not, with other employees like Mrs. Curry?

A Yes, sir.

Q And Mrs. Curry told you in no uncertain tersm, did she not, that nobody can deduct money from your wages, unless you authorize it; is that true, in substance, she told you this; is that true?

A Well, we were talking--

Q Yes. But did she tell you this?

A She did not tell me that.

Q You knew it?

A She was speaking herself to the shop steward, that I heard.

Q She told you how she felt; is that right?

A Yes.

Q She told you that nobody could deduct dues from your wages unless you signed in writing permitting them to do this; is that right?

A She did not tell me that. I heard because she told the shop steward.

Q Oh. She told this to the shop steward?

A Yes.

Q And you overheard this?

A I was sitting right there.

Q Yes.

So that when Mr. Hagler gave you a check and told you that--this was a cash, this was the money that was being returned to you or the dues that was taken out of your wages improperly; is that right?

A Yes, I got a check.

Q Yes.

So that when you received this money from Mr. Hagler you knew that it was the money that was taken out of your wages from October to February, was it--

A Yes, sir.

A Yes, sir.

Q -- for union dues?

A Yes.

Q Right.

And when the union agent came to you in February-- Did he come to you in February?

A March.

Q March?

A Yes.

Q Did Mr. Hagler mention to you in--in February, late February, that the union was pressing him for the dues from you people and if you did not pay it you were going to be discharged?

A No, sir.

Q He never mentioned that?

A No, sir.

Q When was the first time you were aware that there was a problem with the union and you by reason of your nonpayment of dues; when was the first time that you were aware of this problem?

A I don't remember having any problem until we got the check from Mr. Hagler.

Q After that--

A We have no problem when we received the check, nothing was said to us.

Q I am asking you when was the first time--

A February.

Q Well, when in February?

A The 24th.

Q That was the first time that you knew that the union was looking for payment for dues from you; is that right?

A I did not know that.

Q Well--

A Nobody say anything.

Q I thought you said ih February--

A Yes, butnobody say anything to me.

Q How did you know?

A I wanted to know--I received the check for five months, and nothing was said to me that the union is looking for more money or dues.

Q When was the first time that you knew that the union was looking to you for the money?

A March the 5th.

Q That was the first time you knew about it?

A Yes, sir.

Q Did you offer to pay the union at that time?

A No-- Can I explain this, please?

Q No. I just asked you did you offer to pay the union at that time.

A I told Henry I have no money, $71.

You did not have

Q You did not have the money?
A That's right.
Q Did he say you could pay it--
A He did not.
Q -- later on?
A No.
Q You did not say you were not going to pay it?
A I told him I have no money.
Q Did you tell him that you were refusing to pay the money?
A I did not say I was refusing.
Q Do you recall testifying before the New York Unemployment--New York State Unemployment -- New York State Department of Labor, Unemployment Insurance Section, on April 25?
A Yes, I was there.
Q Of 1975?
A Yes, I was there.
Q Do you recall asking -- being asked the same question?
A Yes, but I don't remember what I said there.
Q You do not remember what you said?
A No.
Q You were sworn, under oath--
A That's right

Q -- on that occasion, were you not?

A Right.

Q And you do not recall what was asked of you and what you replied?

A I knowwhatever I said, a few words there, and whatever I said was the truth, but I don't remember exactly what I said.

Q Do you remember when you were asked to pay the dues by the representative of the local union that you laughed at him, do you remember testifying to that?

A Maybe I did; but I don't remember.

Q Do you recall laughing at the representative when he asked you for the dues?

A I don't remember.

Q You do not recall that?

A And if I did laugh, I was laughing to myself because it was very--

Q You did not laugh at him?

A Because it was very funny, we paid, we got the money--

Q Excuse me?

A Can I say---

Q Please let me ask the question.

JUDGE SARRICA: You only answer questions.

Q (By Mr. Schwartz) You did not laugh at Mr. Figuerrra when he asked you for the dues.

A I did not laugh--

A Like I say--

Q Just answer the question yes or no.

A I don't remember.

Q You don't remember?

A No.

Q All right.

I ask you, if you will, please to read on page 60 where it says "A", Answer, to the top of page 61, to that point (indicating), that period. Would you do that, please?

See if that refreshes your recollection.

(Pause.)

Does that refresh your recollection?

A Right.

Q So you did laugh when he asked you for the dues.

A I said it strikes me funny.

Q But you did laugh at him?

A I don't know if I smiled, but I came out with that, yes.

MR. REICH: "I came out with that," I assume that means I would so testify.

THE WITNESS: It strikes me funny that day and he was getting money and he was aking for money.

Q When he asked you for the money you laughed?

recess, at this time.

(Whereupon, a short recess was taken at 3:40 p.m., and the hearing reconvened at 4:03 p.m, the same day.)

JUDGE SARRICA: Ont he record.

MR. EISENBERG: The General Counsel calls Joseph Hagler.

JUDGE SARRICA: Raise your right hand, please.

Whereupon,

JOSEPH HAGLER,

called as a witness, having been first duly sworn by Judge Sarrica, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Eisenberg) Mr. Hagler, would you state your name and spell it for the record?

A Joseph Hagler, H-a-g-l-e-r.

Q Mr. Hagler, do you have any official connection with Gloria's Manor for Adults?

A I am its administrator and I am secretary-treasurer of Jo-Jo Management.

MR. EISENBERG: Your Honor, I request permissinn to interrogate this witness under Federal Rule 43B.

JUDGE SARRICA: Granted.

Q (By Mr. Eisenberg) Mr. Hagler, let me direct your attention to Monday of September 1974. How many employees did you employ?

A Very difficult--

MR. SCHWARTZ: When?

MR. EISENBERG: September of 1974.

MR. SCHWARTZ: Objection. Immaterial, your Honor.

JUDGE SARRICA: Overruled.

A It is very difficult for me to remember. Our business had just started and we were just taking in residents and I really have no exact knowledge of how many employees we had.

Q The business had just started in September?

A We were licensed in May and then we were permitted to allow people to come in and it was based on interviews and by the amount of people that came in.

Q Do you have any-- You do not know, then, how many employees you employed in September 1974?

A I cannot possibly guess. I don't know.

MR. EISENBERG: Could I have these two books marked for identification as General Counsel's Exhibit 20?

JUDGE SARRICA: Those are the official books of the company.

I am wondering if we can't have them marked as Exhibits by using a separate piece of paper and a rubberband for the purposes of interrogation.

MR. EISENBERG: I think that will be acceptable.

MR. SCHWARTZ: Now these are General Counsel's Exhibits--what?

MR. EISENBERG: I believe at this stage it is 20, sir.

JUDGE SARRICA: I think that's right.

MR. EISENBERG: We can mark it 20A and B.

JUDGE SARRICA: All right, for identification, Exhibit 20.

(Thereupon, the document referred to marked General Counsel's Exhibit 20 for identification.)

Q (By Mr. Eisenberg) I show you what has been marked for identification as General Counsel's Exhibit 20.

Can you identify what these books contain

A These books were given to me by my bookkeeper telling me theseare the payroll records of Gloria's Manor.

Q Are they official payroll records of Gloria's Manor?

A To the best of my knowledge, yes.

Q And are you familiar with the payroll records of Gloria's Manor?

A No.

Q Would these payroll records b e accurate?

A Again, to the best of my knowledge, they should be accurate.

Q Could you tell me how many employees you employed

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like that.

Q No more than 27 at any one time-- Did you count 27 in February?

A One or two places I counted.

Q Do you remember which they were?

A No, I don't.

Q You just did it and you don't remember?

A That's right. I counted four months.

MR. SCHWARTZ: That is argumentative and I object to it.

MR. EISENBERG: Yes.

Q Between 25 and 27 for that month?

A That is what I said.

JUDGE SARRICA: Does that mean that for some weeks there were 25 and some weeks there were 27?

THE WITNESS: From-- Very roughly from what I counted that is what it seems to indicate, your Honor.

Q Mr. Hagler, didn't there come a time when you had knowledge of Local 1115's interest in your employees?

A I'm sorry, I did not hear your question, sir.

MR. EISENBERG: Would you repeat it, please, Mr. Reporter?

(Record read.)

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A Yes, they did.

Q When was that?

A I can't remember the exact time, but I know it was prior to--to the first official communication--the NLRB election, it was prior to that, but I can't remember the exact time.

Q How did you get knowledge?

A Well, I had a number of employees that came over to me and they said to me, "Mr. Hagler, we were given cards to sign by a local called 1115, and you told us that Local--that you had a contract with Local 4."

That is how I got the knowledge.

Q When was this?

A I told you-- I had a big job on my hands. I had to fill up my facility. I'm sorry, I cannot remember it, exactly what time.

Q Can you remember the season?

A It must have been warm weather.

Q Does that mean the spring, the summer?

A I don't know.

Q You don't know the month either?

A No.

Q Did there ver come a time that you received a communication from the NLRB notifying you that a petition was filed?

MR. REICH: What sort of petition?

JUDGE SARRICA: The record shows what he testified to.

MR. SCHWARTZ: Pardon me?

JUDGE SARRICA: The record will show what he testified.

MR. SCHWARTZ: That is an improper question because he asked him whether he has testified to that and that is not--that is not his testimony, your Honor.

JUDGE SARRICA: Will you read the question, Mr. Reporter?

(Question read by reporter.)

JUDGE SARRICA: Overruled.

Youmay answer.

A I indicated prior to this that I--it was brought to my attention by various employees.

Q Did there come a first time-- Did there come a time, a first time, when you receibed a petition notifying you of a--strike that--communication by letter from the National Labor Relations Board notifying you that a representation petition had been filed by Local 1115?

MR. REICH: Object to the form of the question.

Usually there is usually a first time for everything.

The question is, did there come a first time when you received a communication, if there wasn't a firs

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time, there was never any communication.

JUDGE SARRICA: I will allow the form to stand, your Honor.

Can you answer that?

Do you remember it?

THE WITNESS: I am sorry, the objection set my mind--

JUDGE SARRICA: Will the reporter please read the question to the witness?

(Record read by reporter.)

A To my knowledge, to my recollection, I--I believe I got some sort of a petition of a--of a UD election that was supposed to take place which had no--which was of no concern to me, I had already had a contract with Local 4.

JUDGE SARRICA: Youdid receive a communication from the National Labor Relations Board concerning a petition.

[illegible]: Was this a communication concerning a petition of 1115?

THE WITNESS: For a UD election which was again no concern of mine and which I forwarded it on to my attorney.

Q (By Mr. Eisenberg) Did you get a petition prior to that time, did you ever see one before that?

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MR. REICH: Judge, aren't we wasting a good deal of time?

MR. SCHWARTZ: Show him the petition.

MR. REICH: The record will-- The records are all her, let him produce what it is, give us dates and we can probably stipulate to it and move on instead of wasting hours.

JUDGE SARRICA: Will you investigate that possibility?

Off the record.

(Discussion off the record.)

JUDGE SARRICA: On the record.

MR. EISENBERG: I believe the parties are willing to stipulate that an RC petition for certain employees of Gloria's Manor Home, Case No. 29-RC-2719, was filed by Local 1115 Joint Board Nursing Home,and Hospital Employees' Division on July 30, 1974, and was sent by registered mail on that date.

MR. SCHWARTZ: So stipulated.

May we go off the record.

MR. REICH: Before you go off the record, if I am--I think my stipulation or asset is required, it is likewise given.

JUDGE SARRICA: Thank you. And I will accept that much of a stipulation.

Off the record.

(Discussion off the record.)

JUDGE SARRICA: On the record.

MR. EISENBERG: Can we introduce that as a joint exhibit?

MR. SCHWARTZ: You have to speak to Mr. Reich.

MR. REICH: I am not a party to this. This is to 405, isn't it?

JUDGE SARRICA: I have gone back on to the record.

MR. REICH: I am sorry.

JUDGE SARRICA: Yes.

In the off-the-record discussion, Mr. Reich requested permission to withdraw from the stipulation that was entered into just before we went off the record.

I grant that request to Mr. Reich.

During the off-the-record discussion there was reference to a further possible stipulation, apparently there is some further discussion necessary on that.

Let us take a few minutes.

Mr. Reich, I'm sorry to interrupt you.

You wanted to raise some question about what General Counsel was saying.

MR. REICH: I thought General Counsel indicated while we were off the record that he wants to withdraw the stipulation entirely.

MR. EISENBERG: Yes, I do, your Honor.

JUDGE SARRICA: Do you want to withdraw--

MR. EISENBERG: As to the prior stipulation that appears on the record concerning the petition, the RC petition mentioned there.

JUDGE SARRICA: Okay. I am incorrect.

The prior stipulation is withdrawn by the General Counsel

We now have no stipulation on the record.

Is there a stipulation that the parties are now ready to enter into?

MR. SCHWARTZ: I am prepared to stipulate so far as the respondent company is concerned that a UD petition, 29-UD-92 dated 9/10/74 filed by Anne Donnegan, Barbara Davis, Donald O'Toole, employees of Gloria's Manor Hme for Adults prepared by Charles R. Katz, Esq., 3360 Lexington Avenue, New York, the attorney also for the Local 1115, and the employer being Gloria's Manor, and the union local 4 Medical and Health Employees Union was received by the respondent company, Gloria's Manor, on November--on 9/12/74.

MR. EISENBERG: I said that.

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MR. EISENBERG: It is my understanding that General Counsel and respondent's employer can stipulate that the petition in 29 UD 92, together with proof of service--

MR. REICH: Mark it in evidence, period.

MR. EISENBERG: -- can be submitted in evidence and marked General Counsel's Exhibit 22 in evidence.

JUDGE SARRICA: And Mr. Reich's position is previously stated, it does not relate to his client or a case he is involved in and he sees n o need to participate in such a stipulation for receipt of General Counsel's Exhibit 22.

That exhibit is hereby received.

(Thereupon, the document referred to as General Counsel's Exhibit 22 received in evidence.)

Q (By Mr. Eisenberg) Mr. Hagler, did you ever call your employees together at any time and so ask them about Local 1115?

A Yes, I did.

Q When was this?

A Right after I got what I considered an official communication, that the--that there was activity on behalf of Local 1115.

Q What do you mean by when you were referring to

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an official communication?

A I received some sort of mailing on it. I don't recall what it was.

Q Was it a petition?

A I don't recall.

Q You called your employees together. Where did you call them together? In your office?

A Either it was the office or if the office is too small, it could have been the dining room. I don't recall offhand which one it is.

Q What did you ask them?

A What?

Q What did you ask them?

A I asked them what any businessman would ask anybody--any of the employees.

Q Just tell me what.

A Right.

Very simply,that I engaged each one of you for employment, I notified you I have a contract here with Local 4, and you all agreed to work under these circumstances, and what happened now.

Q Did you say anything else to them at this time? Did they say anything to you?

A These are the words that I told them. This is the way I expressed myself and to the best of my knowledge, is

what I said.

Q How long did you talk to them?

A I don't recall.

Q Could it have been five minutes?

MR. SCHWARTZ: Objection. Immaterial.

A I don't recall.

JUDGE SARRICA: Overruled.

A (Continuing) I don't recall.

MR. REICH: I object to the question as being speculative or calling for a speculative answer, Could it have been. It could have been anything. We are interested in what it was.

JUDGE SARRICA: Sustained.

Will you rephrase your question?

MR. EISENBERG: Could I have the last question read back, please, my last question?

(Record read by reporter.)

Q Do you know how many minutes it was?

A No, sir.

Q Was it more than one minute?

A I have no idea.

Q Didn't Donald O'Toole talk to you at that time and tell you that he was a chief adheren t of Local 1115?

A Yes, he did, so did Anne Donnegan and Barbara Davis.

MR. EISENBERG: I request that that answer be stricken as being nonresponsive.

MR. SCHWARTZ: I think it is responsive, your Honor; it is a complete answer.

JUDGE SARRICA: I am going to let it stand.

Q Mr. Hagler, I show y9u what has been marked for identification as Gen eral Counsel's Exhibit 21.

MR. SCHWARTZ: May I aee that document to see whether it is the same copy that I have here?

MR. EISENBERG: Yes.

(Handing.)

MR. SCHWARTZ: All right, thank you.

(Handing.)

MR. EISENBERG: Okay.

Q (By Mr. Eisenberg) Can you identify that document, Mr. Hagler (handing)?

A Yes, this seems to be a document that was signed by me.

Q Well, isn't this the affidavit you gave to Mr. Richard Epifanio, Board Agent, under oath, on January 20, 1975?

A Somewhere around there.

MR. SCHWARTZ: I--

MR. REICH: Was the Board agent under oath or the witness?

THE WITNESS: Somewhere around there; yes.

Q You swore to this statement, that is your signature, isn't it?

A Yes.

Q You signed this?

A Yes.

Q You read this at th e time that you signed it?

A Yes.

Q I ask you to read page 2, from page 2--you can read it silently--

MR. SCHWARTZ: From where?

MR. EISENBERG: From the top of the page, six lines down.

THE WITNESS: Six lines, you said?

MR. EISENBERG: Yes.

JUDGE SARRICA: Starting at the top and read down six lines.

THE WITNESS: Yes.

Q Is this what you told to Mr. Epifanio?

A If it is there, I guess I did.

Q Doesn't it state that sometime during the summer of 1974 you received a petition from the NLRB and this was the first notice that you had with respect to Local 1115's activity?

A First official notice.

Q Is this statement true?

A Yes.

Q It doesn't say first official notice down here, does it?

A Well--

MR. SCHWARTZ: Argumentative. Objectionable.

JUDGE SARRICA: Overruled.

THE WITNESS: When Mr. Epifanio spoke to me he said, "Try, to the best of your ability to relate the particular documents"and this is what I considered official.

Q It wasn't the first notice you got?

A I told you that I had employees that had mentioned it to me prior to this.

MR. REICH: Are we going to quibble over the word "notice," your Honor?

MR. EISENBERG: I am not proceeding any further, Mr. Reich.

Q (By Mr. Eisenberg) I show you General Counsel's Exhibit 22 in evidence.

Did you ever see this document at all (handing)?

MR. SCHWARTZ: Your Honor, I have to object.

We stipulated, the document is in evidence, and whether he saw it or not, what is the materiality of it?

JUDGE SARRICA: I would assume that is preliminary to some question he is going to ask.

MR. SCHWARTZ: I hope so.

THE WITNESS: This document is the UD, right?

MR. EISENBERG: Right.

A I think I did see it; yes.

Q When did you see it? You-- Didn't you see it a couple of days after you got it?

A I can-- I could have seen this anywhere from two to three weeks after I got it.

Q Meaning when you got the communication from the Government you don't open your mail right away?

MR. SCHWARTZ: Objection; that is argumentative.

JUDGE SARRICA: Overruled.

A You want me to answer that?

Q Yes, please.

A When I got communications from the Government as far as my labor problems go, I immediately--myself, or upon instructions to my employees forward it to my attorney.

Q Well, do you know if you actually saw it or not?

A I don't recall.

Q You never noticed Donald O'Toole's name on it?

A I don't recall whether I saw this or not, sir, that is what I am trying to tell you.

Q Didn't you discharge Donald O'Toole on September 16?

A Yes, I did.

Q That was only after this petition was filed, wasn't it?

A I don't--

MR. SCHWARTZ: Objection. Argumentative.

JUDGE SARRICA: Overruled.

A I am sorry; question, sir?

Q This petition was was filed September 10; is that correct?

A That is what it says there.

Q And you discharged Mr. O'Toole on the 16th?

JUDGE SARRICA: Objection. He said it before.

THE WITNESS: I see three names here, Ann Donnegan, Barbara Davis and Donald O'Toole.

JUDGE SARRICA: That is not the question.

THE WITNESS: I'm sorry, your Honor.

JUDGE SARRICA: Yes. Read the question.

(Record read by reporter.)

JUDGE SARRICA: Is that correct?

THE WITNESS: Yes, Donald O'Toole was discharged on the 16th.

JUDGE SARRICA: Thank you.

Q You know-- You have no idea whether you saw this sometime between September 10 and September 16?

A Very frankly I doubt that I saw it.

Q How do you forward these kinds of things to your lawyer?

MR. SCHWARTZ: Objection. That is argumentative again.

JUDGE SARRICA: Overruled.

A I have--

Q What do you do?

A I have a lawyer, he is on retainer and I pay him for his work and I pick it up and I send it to him and wait for him to give--to call me and to tell me if he has anything to say to me.

Q How do you physically do it?

A I take a sealed envelope, at least my--either I or any one of my people, and forward it to my attorney, and he acts on it.

Q Do you open up the letters?

A Most of the time, no. In fact, all the time no.

Q You just send it in an envelope, right?

A That's right.

Q And no cover letter at all?

A In the envelope--

MR. SCHWARTZ: Objection, please.

A (Continuing) -- in the envelope--

MR. SCHWARTZ: That was not what he testified to.

A (Continuig) -- in the envelope that it came in.

Q You just put it in a blank envelope and address it to your employer--your attorney?

A I think that is what I said, sir.

Q Is that what you did with this thing?

A Probably so.

Q You did not tell your attorney at all what it was about?

A Sir, I explained to you that all my communications, as far as I have an attorney that I retain for labor and I have an attorney that I retain for other proceedings.

My labor attorney gets all my labor material, sir.

Q When did you first know about the UD petition then; do you remember?

MR. SCHWARTZ: If your Honor, please, this questinon was asked and answered and we are going over it again.

JUDGE SARRICA: Overruled.

A When; no I don't remember.

Q It could have been between September 6 and September 10?

MR. SCHWARTZ: Objection.

JUDGE SARRICA: Overruled.

Q It could have been between September and--September 10 and Septem ber 16, 1974, couldn't it?

MR. REICH: Objected to as to form. What could have been which is of no consequence, what was maybe--

JUDGE SARRICA: In the context of this inquiry I will permit it.

A It could have been in August. It could have been in October. I don't know.

Q So it could have been between September 10 ane September 16?

A Sir, it could have been at any time.

Q And that includes September 10 and 16--

MR. SCHWARTZ: If your Honor, please--

Q -- 1974.

MR. SCHWARTZ: The question has been asked and answered.

JUDGE SARRICA: Suztained.

Q (By Mr. Eisenberg) Mr. Hagler, in March, didn't you

deduct your--deduct union dues for employees during the week ending March 12, 1975?

A I did not deduct anything. My bookkeeper does that.

Q Well, how, do yuu tell her?

A She has her own program, her own schedule and her own chart.

Q How is she told there is even a imopm tjere pr dues ar being checked off?

MR. REICH: Objected to as calling for hearsay or speculation.

This witness is being asked how somebody else knows.

JUDGE SARRICA: It is his employee.

Overruled.

THE WITNESS: I'm sorry, what was the question?

MR. EISENBERG: Would you please repeat that?

(Pending question read by reporter.)

A I imagine she does it on a monthoy basis.

Q How does she know to do it?

A How does she know to do it?

Q Right.

A I showed her that I have a contract with Local 4 and that all employees of--all employees of--have

to b e--have to pay dues.

Q So she does it--she done it for every one; is that right?

A Again, sir, I don't handle the books. To the best of my knowledge I assume that she should b e doing it for everyone.

Q So what does she do for everyone, to your knowledge, sir, concerning the union dues each month?

MR. SCHWARTZ: As to what she does for everyone--I don't understand the question. I doubt if the witness does.

JUDGE SARRICA: Will the reporter please read the question as asked?

(Qestion read by reporter.)

THE WITNESS: I said-- I think I will repeat what I said before, she--she supposedly deducts union dues.

Q Does she record it in books that have been marked as petitiner's--General Counsel's Exhibit 20, in evidence?

A I imagine that she should.

Q I show you the week ending--or the page ending in the 1975 book, the documents--the payroll records for th e week ending March 12.

A Yes?

Q She did not deduct dues for every person on that list, did she?

A She did not deduct--no, because--here, these are people that--I don't know why she did not. I have to find out. I have n o idea.

Q You have no idea at all about what she is doing with the des deductions?

A No. I do not have an idea.

Q Well, do you know why she took out $18 for Helen Stein?

A I think she indicates it here.

Q Three months dues, right--Helen Stein is still working there, is she?

A Yes.

Q The union did not ask you to discharge her in March, did they?

A Not to my knowledge.

Q But she was three months behind in dues, wasn't she?

A I don't know if she was three months behind.

Q How does she pay her dues, do you know?

A How she pays her dues?

Q Yes.

A I don't know. I imagine the same way as everybody else.

Q By checkoff, right, it is deducted from her pay, you mean. Gloria's Manor?

A Yes.

Q I show you the payroll records for the week en ding February 5, 1975.

Doesn't Helen Stein appear?

A Yes.

Q Arent-- Haven't there been union dues deductions for certain employees?

A Yes.

Q But I see no deduction for union dues for Helen Stein that month.

A There is a possibility, I remember my bookkeeper mentioned it to me, that there is--there were certain people that asked that they couldn't afford it, if we can defer it. I don't recall.

MR. REICH: I move to strike the answer as speculative, any of the answers it could have been, it might have been.

JUDGE SARRICA: Sstained.

Q Do you have any communication with your bookkeeper concerning which--concerning which employees dues should be deducted or--

A Do I have any communication?

Q Yes.

A When a problem does arise she does come and mention it to me.

Q Can you tell me some of the problems she has mentioned to you?

A I gave you one inst-nce right here, in the case of Helen Stein.

Q Any other communications of any nature concerning dues deductions with your bookkeeper?

MR. SCHWARTZ: I object to that unless we can have something more definitive.

A Do y9u have anything specific that you would--I would be very happy to answer if yuu have anything specific you would like--

JUDGE SARRICA: The objection is overruled.

The question will be read and you will answer the question.

THE WITNESS: I'm sorry, what is the question again.

(Record read by reporter.)

MR. SCHWARTZ: I object.

I don't see how that witness can answer that question.

JUDGE SARRICA: I'm sorry; that is overruled, Counsellor.

Let th_ _ness t_ to answer it.

THE WITNESS: I tried to explain at the very outset that I had a huge responsibility assigned to me to fill up Gloria's Manor. I assigned specific responsibilities to specific people, and not all the time do I know of everything that goes on in Gloria Manor although I really should know.

JUDGE SARRICA: You referred to the fact that the bookkeeper communicates with you if there are any problems, did you not?

THE WITNESS: I said that there are times that she--yes, there are times she does.

JUDGE SARRICA: The General Counsel is asking for those specific times when those related to union dues from your recollection.

THE WITNESS: The only recollection that I would have right--the only recollection that I would have right now would be in this particular instance.

JUDGE SARRICA: You have no recollection of any other--

THE WITNESS: At the moment, no.

JUDGE SARRICA: Okay.

Mr. Schwartz?

MR. SCHWARTZ: Your Honor, I notice it is 5:15, are we going to be much longer?

JUDGE SARRICA: Is this a convenient place

to break?

MR. EISENBERG: I don't believe so. I don't really think we will be much longer.

JUDGE SARRICA: All righ t.

MR. EISENBERG: If I see for some reason I go too long I will inform you of a convenient place to break.

JUDGE SARRICA: Thank you.

MR. REICH: I take it that the place to break may come before the reporter gets up and says, "That's it."

Q I notice that on your books for the week ending-- the payroll books for the week ending June 18, 1975--

JUDGE SARRICA: Mr. Schwartz, you are interfering with the interrogation. You can step back,

MR. SCHWARTZ: I'm sorry., If your Honor, piease, I think I am entitled to be aware of what the question is.

JUDGE SARRICA: Yes-- Mr. Schwartz you are entitled to be aware of what the question is and I will give you an opportunity before the witness answers after the question is asked but the General Counsel is entitled to be next to those books in order to ask the questions.

MR. SCHWARTZ: I have no objection that he be next to the books but I would like to be next to the books, too.

JUDGE SARRICA: If you will step back while he asks the question I will give you an opportunity to look at the books before the answer is made.

MR. SCHWARTZ: Thank you.

Q (By Mr. Eisenberg) I notice that initiation fees were deducted from the pays of certain employees on that day--that date; is that right?

M R. SCHWARTZ: Before you answer, can I look?

JUDGE SARRICA: Yes.

MR. SCHWARTZ: Thank you.

A Well, the books indicate that there are deductions here.

Q How did your bookkeeper know how to take those initiation fees?

MR. REICH: Objected to as calling for hearsay or a guess. How somebody else knew something.

JUDGE SARRICA: Will you rephrase that question, please?

Q (By Mr. Eisenberg) Did you tell your bookkeeper to deduct the initiation fees from certain em ployees' wages as reflected in your payroll records?

A No. My bookkeeper handles it all herself.

JUDGE SARRICA: That is not responsive, sir.

THE WITNESS: No.

JUDGE SARRICA: Did you tell her?

THE WITNESS: No.

Q Did somebody tell her?

A I don't know.

Q Do you know how she decided to do this.

M R. SCHWARTZ: He already-- He already answered that he did not know how she decided. It is the same question that's been asked again.

JUDGE SARRICA: Overruled.

THE WITNESS: I'm sorry, what was the question?

JUDGE SARRICA: Please read it.

(Record read by reporter.)

A No, I don't know.

Q You have no idea at all?

A No.

Q Can you explain why one dollar on th $ date was removed from the pay--under the column marked Initiaion Fees--

MR. SCHWARTZ: Objection. The question was asked and answered.

He does not know. The bookkeeper does it.

MR. EISENBERG: May I finish the question?

JUDGE SARRICA: You may.

Q -- why it was deducted from the pay of John Breen, Dario Candelario, Susan O'Keefe, Judith Lenahan, and Nora Donahue, Ellen Lorizzo, Helen Epstein, Phyllis Gallagher, Sheila Sciscbitono, Mary McGowan, Margaret Feurst, Mary Kaliff and not from Tim McGeary, Tom O'Toole, Barbara Davis, Steven Donahue, David Frankel, William Hillschnuff, Mary Duffy, Ellen Carey, et cetera.

A I-- MR. REICH: What is et cetera's first name?

A So what is your question, I'm sorry.

MR. EISENBERG: Will you read back the question, please, withat the names?

(Record read by reporter.)

JUDGE SARRICA: Do you know why it was deducted from the names with the dollars next to it and why it was nt deducted from other names?

THE WITNESS: No, I don't know.

Q (By Mr. Eisenberg) Initiation fees were deducted from the wages of employees during the weekending of July 9th, 1975, were they not?

MR. SCHWARTZ: Don't answer that until I look at it.

JUDGE SARRICA: Yes; hold it.

MR. SCHWARTZ: Objection-- Okay.

A My records seem to indicate that they were deducted, yes.

Q It seems that they were deducted from the Tim McGeary; is that right?

A That is what the record says.

Q John Breen again, right?

A John Breen, the record says yes.

Q Well, Dario Candelario; correct?

A What number is that--that is number nine--It seemed so. Yes.

Q Susan O'Keefe?

A What number is that--that is No. 11. It seemed yes.

Q Judith Lenahan?

A Judith Lenahan, it seems yes.

Q And Nora Donahue?

A It seems yes.

Q Ellen Lorizzo?

A Yes.

Q Well, Helen Stein?

A Yes.

Q Sheila Schiaccbitono?

A Yes.

Q Mary McGowan?

A Yes.

Q Margaret Feurst?

A Yes.

Q And Mary Califf--I'm sorry-- No, Mary Califf, correct?

A Right.

Q Are initiation fees continued to be dedicted for these employees?

MR. SCHWARTZ: I think== Objection I think the books and records would be the best evidence.

They speak for th emselves.

A I think--

JUDGE SARRICA: He can look at the books and records--you don't want the books and record permanently here.

MR. SCHWARTZ: If he would refer to them--

THE WITNESS: Any dues and initiation fees could be indicated.

JUDGE SARRICA: Will you look?

THE WITNESS: Shall I continue to look?

JUDGE SARRICA: Yes.

THE WITNESS: Where do you want me to look.

MR. EISENBERG: Past July, the next time you see it.

MR. SCHWARTZ: I--

MR. REICH: Past July of 1975? Is that the question?

MR. EISENBERG: Your Honor--

THE WITNESS: Here is some more in July.

MR. REICH: Here in the first week in August now.

Q Were they for some of those employees or all of those employees that were mentioned previously?

A It seems that way.

Q You don't know anything about this, though, do you?

MR. REICH: If your Honor, pleases. I object. He already testified in the very beginning, and I don't mean to be argumentative--

MR. EISENBERG: I will-- Mr. Reich I understand.

MR. REICH: That the bookkeeper was in charge and he knows very little about this.

MR. EISENBERG: I understand your complaint.

JUDGE SARRICA: Do you have a q uestion-- Did you withdraw that q uestion?

MR. EISENBERG: No, I did not withdraw th e question--excuse me, that question, yes, I withdraw.

JUDGE SARRICA: Right.

Q Can you tell me for which employees in July

initiation fee was deducted?

A Whatever you read off and I see some more--

Q I did not read anything off in that month. Why don't you read it off.

A Originally you did read off July. What you read off was July.

Q There was another deduction in July, is that what this is?

A That is what the book seems to indicate.

Q Can you read the employees for which deductions occur?

A Tim McGeary, John Breen, Dario Candelario, Susan O'Keefe, Helen Stein, Sheila -- I can't pronounce the second name, Mary McGowan, Margaret Fouse, G. OrTega, Marcy Califf and Jose Ortega.

Q Do you know how much the union's initiation fees were?

A No, sir.

Q Never were told?

A No, sir.

MR. EISENBERG: Your Honor, this may be a good spot to stop.

I believe this will be a convenient time to stop, to break for the day.

JUDGE SARRICA: Do you want to stop at this time and resume in the morning?

P R O C E E D I N G S

JUDGE SARRICA: Let's go on the record.

The hearing will be in order.

Mr. Hagler, you are still under the same oath you gave yesterday.

THE WITNESS: Yes, ma'am.

Whereupon,

JOSEPH HAGLER

having been previously sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Cont.)

Q (By Mr. Eisenberg) Mr. Hagler, who is your bookkeeper?

A Bob Pearlstein.

Q Where does she work?

A At Gloria's Manor.

Q Does she have an office in Gloria's Manor?

A Adjacent to my office there is an opening -- an open partition from where she works.

Q I show you again your payroll records which have been marked as General Counsel's Exhibit 20 for identification for the payroll period ending March the 12th, 1975.

Again I ask you about Helen Stein, does it not show there that three months union dues were

deducted from her pay on that date?

MR. SCHWARTZ: Objection, that was testified to yesterday.

It's repetitive.

JUDGE SARRICA: I take it it's leading into some question here and may I suggest if you would like to look at the books while he questions that you stand between -- right here behind the witness, all right.

MR SCHWARTZ: Yes.

I will do anything you want me to do.

JUDGE SARRICA: So that you can both function efficiently.

MR. SCHWARTZ: Okay.

JUDGE SARRICA: I will overrule the objection.

MR. REICH: What was the date?

MR. SCHWARTZ: March the 12th, week ending March the 12th.

A The books show that.

Q I show you your payroll books --

MR. SCHWARTZ: Book.

Q Book, excuse me, for the period the week ending February 5, 1975.

Isn't it fact that no dues were deducted from Helen Stein at that time?

MR. SCHWARTZ: Again, if Your Honor pleases, that was testified to yesterday, again it's repetitive.

I don't think there's been any different basis that he is seeking at this time, and we are just wasting time.

JUDGE SARRICA: I will overrule you.

I want to see what he is getting to.

Q Isn't it a fact that no dues were deducted from Helen Stein for the payroll week ending January 8, 1975 --

MR. SCHWARTZ: Again, Your Honor --

Q Although it was deducted for other employees?

MR. SCHWARTZ: Again, Your Honor, this is the same question asked yesterday and answered and it's in the record and it's repetitive.

JUDGE SARRICA: Thank you.

It may well be.

My recollection is to what the questions and answers were at that hour yesterday are a bit vague and I would like to have this in.

MR. REICH: Judge, would it help any if we were to stipulate, I am ready to stipulate that no dues were deducted from Helen Stein prior to -- what's the first date?

MR. SCHWARTZ: March 12th, 1975.

MR. REICH: -- March 12th, 1975.

JUDGE SARRICA: Will that be adquate for General Counsel?

MR. EISENBERG: I will see in one moment.

JUDGE SARRICA: All right.

Off the record.

(Discussion off the record.)

JUDGE SARRICA: Back on the record.

MR. REICH: In connection with that offer to stipulate, Your Honor, I will call counsel's attention as well as your attention to the fact that there is in evidence G.C. 15J which is a record of monies received by the union for Helen Stein which indicates that the first time of actual receipt was March the 17th, 1975.

JUDGE SARRICA: Thank you,

MR. REICH: Although that receipt was for the months of December, January and February.

MR. EISENBERG: I will join the -- in the stipulation.

I will stipulate that, that dues were deducted --

JUDGE SARRICA: Going back --

MR. EISENBERG: Until March -- the week ending March the 12th where in three months dues were deducted or $18.

JUDGE SARRICA: Thank you.

Q (By Mr. Eisenberg) When was Helen Stein hired?

A I don't recall.

Q Was it in 1974?

A I think so.

Q Wasn't it in November, 1974?

A It could have been.

I don't know.

Q You testified last time that you had some kind of a conversation with your bookkeeper concerning Helen Stein's dues.

Can you tell me what that was?

A I can't recall.

I said --

Q Do you know anything about $18 being deducted from her pay at that time, March -- the week ending March the 12th?

A No, the only -- the only thing I remember my bookkeeper coming over to me perhaps about somebody, I don't recall who, and saying that they had found it's a hardship and for her to get in touch with the union and to find out that the union had indic ated wherever there would be a hardship cases, that they would, you know, work along with -- or what have you.

Q Did you ever know at anytime which employees signed dues checks or authorizations for Local 4?

A No.

MR. REICH: The word you is addressed to the witness personally I assume?

MR. EISENBERG: Yes.

MR. REICH: All right.

Q (By Mr. Eisenberg) And you never had any conversation with your bookkeeper on which employees to deduct dues from?

A No.

Again, as I explained to you yesterday, I have to care for 170 residents and I have -- I have to listen to what their problems are, this is my main concern and I assign different people to different responsibilities.

Q Don't you as administrator of Gloria's Manor deal with Local 4 concerning terms and conditions of employment of employees?

A Yes, I do.

Q Does anybody else?

A No.

Q And you have no idea how the bookkeeper would know which dues to deduct from which employees?

MR. REICH: Objected to as having been asked and answered.

JUDGE SARRICA: Sustained.

MR. EISENBERG: Your Honor, at this time I wish to offer into evidence portions of these two books.

The records for the payroll week ending September 4th, 1974, October 9th, 1974, November 11th, -- excuse me, November 6th, 1974, December 11th, 1974, January 8th, 1975, February 5th, 1975, March 5th, 1975, March 12th, 1975, April 2nd, 1975, May 7th, 1975, June 18th, 1975.

JUDGE SARRICA: I didn't get that date.

MR. EISENBERG: June 18th, 1975. July 9th, 1975, and July 23rd, 1975.

MR. SCHWARTZ: What's the purpose?

I don't know what the materiality is.

I object to it being offered and I -- I object.

JUDGE SARRICA: I am waiting for Mr. Reich.

MR. REICH: I didn't know counsel was through.

My position is, Your Honor, I object to the introduction to these things unless it is specifically specified what particular items are being offered for what particular, absent that we are going to have one, two, three -- 13 long sheets containing as far as I heard yesterday 20 odd people and we are

Respondent Employer.

MR. REICH: In view of that ruling, Your Honor, I respectfully request an adjournment of this case until after Labor Day so I may have an opportunity to study and analyze each of these pages in an effort to guess at what the purpose of their offer is and what disparate treatment there is, if any.

I certainly cannot do it today, and the time limitation that has been imposed upon me has been discussed heretofore, so I don't see that we can be ready until after Labor Day.

JUDGE SARRICA: I will hold that motion in abeyance while the General Counsel proceeds with his direct part of the case.

(Whereupon, General Counsel's Exhibit 20 was received in evidence.)

MR. SCHWARTZ: You have overruled my application for limitation of the document.

JUDGE SARRICA: I have for the time being, I may when I decide the case regard it as -- as beyond --

MR. SCHWARTZ: The scope of the complaint.

JUDGE SARRICA: -- the scope of the complaint but I am not sure about the argument just made, so I will receive it.

there should be no hocus pocus.

I mean this is not the foundation of justice in this country.

Let him disclose with respect to each employee that he is contending either the union or the company improperly acted.

So if -- if there is a real defense, I can meet it, not be entrapped.

That's not the purpose of this case.

I am sure that's not the purpose.

I think you are -- you're as anxious as well as everyone of us here to ascertain the truth of this litigation and whether or not actual violations of the Act has been committed.

Let's not play hocus pocus.

JUDGE SARRICA: Thank you for your comments.

We will now adjourn for 15 minutes.

(Recess taken at 10:17 A.M.)

(The hearing reconvened at 10:27 A.M.)

JUDGE SARRICA: Let's go back on the record.

MR. EISENBERG: Let me try to for the record rephrase what I was -- what I have advised counsel off the record.

The reason the documents are being introduced as limited by me are, one, to show the pattern of

employer's deductions for Local 4 dues from the date started to show that for March 5th -- the week ending March 5th, payroll week ending March 5th, 1975, the week when the five alleged discriminatees were terminated by the employer upon demand from the union, no dues for that period of time had been deducted for -- for that month had at that time been deducted from the wages of its employees but rather on March 12th dues deductions were made from the wages of its employees in the amount of six dollars for each of them, except for -- well, there are three actually, but on March the 12th for whom dues deductions were shown $18, apparently for three months, and in prior months it was with respect to one of them, possibly the other two, prior three months no dues were deducted.

With respect to the later dates, specifically in June and July --

MR. REICH: With respect to what?

MR. EISENBERG: The later dates, I am sorry, with respect to June and July to show initiation fees started being deducted from the wages of certain employees and continued through July, whereas no initiation fees had been deducted prior to that and that certain employees about whom there has been -- there had been testimony previously never had initiation

fees deducted from their wages.

The purpose of this is to show that the five alleged discriminatees -- rather that the employer had knowledge or reasonable ground to know that the five alleged discriminatees had been treated disparately by the union concerning their union dues and fees obligation and yet in any event discharged them upon demand of the union with that knowledge.

Moreover, to allow -- to show that or as additional evidence that these employees were discharged by Respondent Employer for reason other than the failure to tender periodic dues and fees as maybe required by a union security clause within the meaning of 8A(3).

MR. REICH: Excuse me.

Since he is going to clarify it, I will take the liberty of interrupting at this stage, the last statement you made, they were discharged for reasons other than -- is that something that is going to be resolved from this exhibit or is that an inference you seek to draw?

MR. EISENBERG: The latter.

MR. REICH: So the exhibit is not reflective of that, is that correct, sir?

MR. EISENBERG: It's reflective in that it

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may allow an inference to be drawn or it may not allow an inference to be drawn -- such an inference.

MR. SCHWARTZ: I would like, if Your Honor pleases --

JUDGE SARRICA: One moment.

Have you completed your presentation of what you expect to use or find in these exhibits and what inferences you expect from those?

MR. EISENBERG: Yes, not completely, Your Honor, one further thing, the inference maybe drawn or may not be drawn by I believe it maybe drawn from these exhibits, is that -- and specifically with respect to Helen Stein, that perhaps a reason or maybe the only reason these five employees were discharged is because they failed to authorize the employer to deduct wages -- union dues from their wages.

MR. SCHWARTZ: That's going to be reflected in this exhibit?

JUDGE SAR : I don't know that.

I am asking him to inform counsel and me of course what else to look for in these exhibits.

MR. SCHWARTZ: Your Honor, I have a very --

JUDGE SARRICA: I don't necessarily -- what ultimate conclusion you would draw from that, but what inferences -- what information, etc., these

exhibits presents. 605

MR. EISENBERG: Well, if my last remark concerning the authorizations which frankly I am not convinced I am even going to take that conclusion --

MR. SCHWARTZ: Then con't do it.

JUDGE SARRICA: I can't see how that would be reflected on the payroll.

MR. EISENBERG: In that case, Your Honor, I am finished with my presentation concerning this -- concerning inferences at this time.

JUDGE SARRICA: Thank you.

MR. SCHWARTZ: I have great concern with counsel's offer at this moment.

As I understand him he is saying that he is introducing these records, one of the reasons being to show that the employer's action was such on March the 3rd or the 5th that he should have known or reflects a treatment of these five discriminatee employees different than the others and I fail to see how any action that he could have taken beyond March the 5th would show his action of March the 5th, and any introduction of records --

JUDGE SARRICA: I am beginning to see what it does show and I have received that subject to further consideration at that point.

MR. EISENBERG: Your Honor, I -- if I may make one

to emphasize to Don that --

more statement to amend my presentation?

MR. SCHWARTZ: Before you do, counsel I am not finished.

MR. EISENBERG: Proceed.

MR. SCHWARTZ: Your Honor has said that you are beginning to see --

JUDGE SARRICA: Yes.

MR. EISENBERG: Also that the employer had knowledge or reasonable cause to believe that the union's demands that the five alleged discriminatees be discharged, exceeded permissible limits.

MR. REICH: Exceeded what?

MR. SCHWARTZ: It did -- from these records or this is something you are arguing --

MR. REICH: Exceeded what, I didn't hear you.

MR. EISENBERG: Permissible limits.

JUDGE SARRICA: This is going to be reflected in these -- from these records that we have just received, is that correct?

MR. EISENBERG: It may well be.

JUDGE SARRICA: It may well be?

MR. SCHWARTZ: I don't want any speculation. I mean is this a fishing expedition or is he going to produce facts and evidence?

and we know at the time the demand was made that no dues for the month of March, six dollars, had been deducted from the pay of the employees.

MR. SCHWARTZ: Which employees?

Any of them?

MR. EISENBERG: All of them.

MR. SCHWARTZ: Oh.

MR. EISENBERG: And concerning the prior evidence -- concerning the amount of the demand, it may well be that that demand as far as the actual money that was being required at the time it was being required was not correct and that is why that is being offered..

JUDGE SARRICA: It would appear that counsel has attempted to spell out his positions on these various documents and what inferences he thinkgs are necessary from the documents themselves and what is to be considered in he documents, that being the lack of deductions as well as the specific deductions for all the employees.

I am going to deny the motion that you just made Mr. Reich and allow these documents to stand as received.

At this time I would ask that the General Counsel proceed with this witness to complete your case.

MR. SCHWARTZ: Okay.

CROSS EXAMINATION

Q (By Mr. Schwartz) Mr. Hagler, I think you testified on direct examination that the payroll books and the deduction of the union dues and/or initiation fees was a matter strictly handled by your bookkeeper and not by you?

A Yes, I did.

Q And any information with regard to deduction of dues or initiation fee, as you testified, was handled by your bookkeeper only?

A Yes, I did.

Q And do you know whether she received instructions from the union in this regard?

A When I --

Q If you know?

A No, I do not know.

Q All right.

However, I think you testified you gave her no instructions?

A I gave her no instructions.

Q I assume other than to tell her there was a collective bargaining agreement and that there were dues and initiation fees and that the union would would require employees to pay pursuant to the

collective bargaining agreement, is that correct?

A That's exactly so, sir, yes.

Q I think you were asked on direct examination when you first came to know about Local 1115, I think you testified that some employees came to you and informed you that they were approached to sign a card from a Local 1115, was that your testimony?

A Yes, it was.

Q And then you were asked to explain an affidavit that you had given the Board with respect to mentioning that a notice, the first notice you received from Local 1115 was a U.D. election or an election --

MR. SCHWARTZ: Can I see that affidavit, the original?

MR. EISENBERG: Yes.

Let me look for it.

MR. SCHWARTZ: I have a copy, I think.

MR. EISENBERG: It may well be --

JUDGE SARRICA: Yes.

It's 21 for identification.

MR. EISENBERG: Here it is.

(Mr. Eisenberg handed document to Mr. Schwartz.)

MR. SCHWARTZ: Thank you.

Q (By Mr. Schwartz) Counsel for General Counsel referred to an affidavit marked as General Counsel's

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Exhibit 21 for identification --

MR. SCHWARTZ: It doesn't say here whether it's for identification or what -- it just says G.C. 21 --

JUDGE SARRICA: That's for identification.

MR. SCHWARTZ: All right.

Q -- and he referred to a statement to -- on page two to the effect that you stated sometime during the summer of 1974 I received a petition from the NLRB, period.

This was the first notice that I had with regard to Local 1115's activity.

When you gave this statement were you asked what was the first time you had contact or knew about Local 1115?

A No, when I gave the statement they asked me whether -- when I got the first notification that the NLRB was -- was -- whether -- that 1115 -- I am sorry, can yuu please repeat the question?

I am sorry.

I didn't hear your question.

JUDGE SARRICA: One moment.

Let the Reporter read the question.

(REcord read.)

A I was asked about a written contact.

Q I see.

At least that was your understanding?

A Yes.

Q All right.

Did -- when you received the U.D. petition in September of 1974, did you receive any inquiry from employees of yours concerning this petition -- I withdraw that.

I withdraw that.

You were asked by counsel for the General Counsel concerning Mr. O'Toole and that he advised you at some time -- at some point in time that he was active for Local 1115.

Wasn't it known to you at that time that Barbara Davis and Anne Donnegan were also equally active?

A All three names --

Q No, just answer the question.

A Yes.

Q Is Barbara Davis still employed by you?

A Yes, she is.

Q Is Anne Donnegan still employed by you?

A No.

Q When did she leave?

A She left to my knowledge, it was somewhere -- again it's based only on my knowledge -- I think it was sometime at the end of September or the beginning of October --

maybe the end of October.

Q Did she quit?

A She left on her own.

Q So the answer is yes?

A Yes.

Q Did you discharge Mr. O'Toole because he was active for Local 1115?

A No, sir.

Q Did his discharge have anything to do with Local 1115?

A No, sir.

Q With respect to the discharge of Mr. O'Toole, do you recall when you hired Mr. O'Toole?

A Mr. O'Toole to my memory was hired somewhere -- sometime in April of 1974.

Q I think the testimony was that he was hired as a dishwasher, is that true?

A That's right.

Q And then sometime in July of 1974 his position was changed?

A It was either the end of June or the beginning of July.

Q Do you know what his position was changed to?

A Yes, he was the night security man, night switchboard operator.

Q All right.

Now, did you have somebody performing this function prior to the time you made O'Toole -- prior to the time O'Toole took over this job?

A Yes, I did.

Q Who was that?

A Well, he was also prior and --

Q Who --

A -- and simultaneously because O'Toole only worked four nights a week.

Q I see.

Who was this?

A This is a fellow by the name of Thomas Romayne.

Q Thomas Romayne?

A Yes.

Q Now, when you instructed Mr. Romayne in the duties of the position similarly held by Mr. O'Toole, what were your instructions?

Were they similar to the ones that you gave Mr. O'Toole?

A Exactly the same.

Q And what was that?

A The instructions were for either gentleman, who was on duty that evening, to mand the switchboard for any emergencies -- emergency calls that would be coming

down from the residents because we deal with geriatrics and there are -- many of them got sick during the night and somebody had to be at the switchboard, they had to be at the switchboard in case of emergency, they had to take in the outdoor furniture, they had to secure the building because there are reports to me of peeping toms and this is so close to the beach where there is a lot of problems from vandelism -- attempted vandelism from the beach so these things had to be -- and rounds had to be made on a detex clock system which we do punch a clock every -- every hour.-- I'm sorry, I didn't complete it yet.

It was understood by both that they were to come in at ten o'clock which is an half hour prior to my night switchboard operator leaving so that they can get any instructions that I left them from my switchboard operator and that they are either to go into the kitchen in that half hour period and either prepare themselves the food so that they can eat it at the switchboard because they were not to leave the switchboard and they were not to deduct for any lunch hour, for any meal time, they were paid for the complete -- in other words, no meal time was taken from them, they were paid for the complete time because of the urgency and they agreed to it.

Q And they were permitted to eat while they were at the switchboard and were paid for the time that they took?

A Right.

Q Just give us a little background, if you will, of your operation?

What is it?

What kind of an organization do you have?

A My operation is a -- is a proprietary home for adults.

Q What's that mean?

A That means this is a -- bascially it's a hotel type of living for senior citizens in which we afford our people three meals daily.

We afford them board where they sleep.

We have different types of activities that we have -- different type of activities that we have for our people such as --

Q Like what?

A Arts and crafts, movies, live entertainment, we go on trips at times, we have bingo, different types of activities that we afford our people during the course of the day.

Q All right.

Does --

A We are -- we are licensed by the New York State Board of Social Welfare, and among the requirements besides arranging for a chamber maid, waitresses, we have private -- this is a must where there must be private telephones in the rooms which are hooked up into a switchboard for that very specific purpose that should anybody not be well, and an aide not be on the floor and available to them, that these people who are ambulatory people, these aren't nursing people, they are considered ambulatory people, are well enough to pick up the phone and to be hooked into our switchboard and receive as quickly as possible aid as we can possibly afford to them and this is one of the requirements by the Board where a night switchboard operator remain at the board for the specific purpose of lending assistance to any of the aged that may need it.

Q You say that's a mandatory requirement?

A Yes, it's on our staffing schedule.

Q Can you tell us the average age of the people that occupy your facilities?

A Well, I would say -- I would say they range in age from about low 70's to the middle 90's.

Q Now, with respect to the instructions that you gave both Mr. O'Toole and Mr. Romayne, did it

call for -- was there anything to do with furniture that was out door furniture that had to be removed from the outdoors after dark?

MR. EISENBERG: Your Honor, I am going to object to this whole line of questioning.

I waited.

I believe it's outside the scope of the direct and perhaps it's -- it seems to be in the nature of a defense.

MR. SCHWARTZ: If Your Honor pleases, he opened the door when he started to question Mr. Hagler about Mr. O'Toole, whether he was acting -- the implication was and I think he even stated it in the record, as to the date of his discharge with the date of the petition and the implication was that was the basis or one of the reasons why Mr. O'Toole was discharged.

JUDGE SARRICA: I do have a notation about having asked about whether or not O'Toole said he was one of the main adherents of 1115.

Now, certainly the details here appear to be in the nature of defense beyond that particular conversation.

However, I prefer not to be as strict here whether you are in the main part of the case or defense when

time if you wish to put in a portion of your defense but you may not lead him in areas that are beyond what the direct examination covered.

MR. SCHWARTZ: I don't intend to do that.

JUDGE SARRICA: All right.

Thank you.

Q (By Mr. Schwartz) Now, with respect to Mr. O'Toole, did you give him specific instructions concerning his job?

A I -- at times I gave him and at times I left instructions for him with my night switchboard operator.

Q Those that you gave him, can we speak about?

A Right.

Those that I gave him were specifically as follows:

That he was to mand the switchboard, make his rounds on the detex clock system, take the -- take the outdoor furniture in, secure the gate, the second time that I gave him those instructions was after it was reported to me that furniture was stolen from in front of the facility and I pointed out to him that it was pointed out to me that the furniture was stolen on the mornings after he was on duty and that the furnituee was left outside.

I asked -- I had asked him to please make sure to take in the outdoor furniture and sit at the switchboard and secure the building.

On the third time that I gave him instructions was when I received information from one of my residents and used the word, "I almost died last night and I couldn't get through to the switchboard, Don was no where to be gotten."

Q And did these complaints occur more than one time?

A Sir,I just gave you -- I just gave you three --

Q Please answer the question?

A Yes. Yes.

Q And did you have a conversation with Mr. O'Toole concerning the complaints that you received?

A I certainly did.

Q Now, when you gave instructions to Mr. O'Toole as you testified a moment ago indirectly, who was the person that would -- that would -- that you would give the instruction, if you did give any instructions to some other person, to give to him?

A That would be my night switchboard operator.

Q And who is that?

A That was Mary Duffy.

Q What would you tell Mary Duffy?

A I would tell Mary Duffy, Mary, please make sure to emphasize to Don that --

Q Don who?

A Don O'Toole, I am sorry, Don O'Toole to please make sure that the furniture is brought in, that the building -- the buildings are secured and that to please ask him because I received a number of complaints, that he sit by the switchboard, the health of my residents are at stake.

Q Directing your attention -- do you know whether she carried out this instruction -- these instructions -- these instructions?

A I questioned her the following day when she came in and I asked her, Mary, did you deliver my message to Don O'Toole and she said, Mr. Hagler, I did.

Q Did you receive further complaints concerning Mr. Donald O'Toole and his work?

A Well,there was an instance -- one of the reasons that Don O'Toole became night man is that the night man prior to him, I liked him -- I liked to make spot checks of my night people to see whether they are doing their job and prior to that there was a gentleman by the -- I don't recall his name, was working as a night man --

MR. EISENBERG: Objection, Your Honor.

This is not responsive to the question.

JUDGE SARRICA: Let me hear the question.

(Record read.)

JUDGE SARRICA: Yes or no?

THE WITNESS: Yes.

Q (By Mr. Schwartz) From whom?

A From a resident, a Mr. Martin Westheimer.

Q What did he tell you?

A He said to me, gee, you can drop dead upstairs, you pick up the phone, a million times and Don is never there and I know that he makes his rounds every hour so I made sure not to call when he was making his rounds.

Q Did you speak to Mr. O'Toole about this?

A I certainly did.

He said well, he doesn't know what he is talking about,but nevertheless I made it a point that I chose to listen to what my resident had said to me.

Q Was there sometime in July 1974 that a -- that you discovered Mr. O'Toole had come in late?

A Yes.

Q What occurred on that -- can you pinpoint the date?

A It was sometime -- I think sometime in July, again it was in the hot season, it could have been in July.

It could have been in August.

It was in July or August.

I don't recall exactly when it was but it could have been in July and I made my business to make checks of my night men to see how they were doing, I was concerned with the security of -- with the safety of my people and I came to Gloria's Manor and I found that Donald O'Toole's card was punched in and Donald was not on the job.

Q Did you speak to Mr. O'Toole concerning this incident?

A I did.

Q What did he say, if anything?

A And he answered to me, he says Joe, I called in that I am going to be late, I tried to make it, so I asked one of the boys to do me a favor and to punch my card.

Q Did you say anything to him concerning this incident?

A I told -- I said to Donald O'Toole that this is going to be one of the last times that I am ever going to tolerate something like this, that I

just cannot go on tolerating these experiences or happenings.

Q Directing your attention to September 16th, 1974, can you tell me anything -- can you tell me if anything occurred on that occasion?

A The night of September 16th, 1974, was the eve of the Rosh-A-Shanah, the beginning of the Jewish New Year.

I stayed on at Gloria's Manor because I performed the High Holiday Services for my people.

I retired at about nine or 9:15 that evening, leaving instructions with my switchboard operator, Mary Duffy, Donald was to be on night and to please -- I -- to please make sure that he follows those same instructions and that is again to take in the furniture, secure the gates, make his rounds and sit by the switchboard.

I retired that evening, and being the days of or in the Jewish religion -- I was not able to sleep and I was very uncomfortable and I got up at about 1:30 in the morning and I came downstairs.

When I came downstairs I found Donald O'Toole in the kitchen preparing food for himself.

When I went over to him and I asked him, Donald, what is this, he mumbled something under his breath,

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like somebody was surprised, gave me the appearance of somebody that was being surprised and I said to him, Don -- I said to him, Don, I think you have just about had it here, I think you ought to punch out and leave.

He followed me out into the lobby and he said == he asked me would I please reconsider, that his father would punish him because he wasn't doing his job, that it would never happen again and would I please reconsider and I said Don, I have given you a number of chances, it's the hardest thing for me to do, on Rosh-A-Shanah, the Jewish New Year, for me to sit by a switchboard and not have somebody here but I think you have exhausted all the chances you can possibly have and even though it being Rosh-A-Shanah, I have to ask you to leave, he punched his time card, I think it was approximately at 2 a.m., and he left.

Q All right.

Did you call him thereafter or did he call you?

A He came back to me I think it was on the following Thursday --

Q Did you call him?

A No, he came to see me and he asked me for --

would I reconsider -- would I take him back to work, he made a mistake, I said Donald, you have made too many mistakes I have had too much aggrevation and I can't sleep at night knowing that you are on duty, I cannot reconsider taking you back.

Q Did you ever tell him that he not -- he need not bring in the furniture from outside?

A No, this was a standard order.

This was a repetitious order to any and all of my night people.

Q Did he ever complain to you about storing the furniture in an area which blocked an exit?

A Yes, he did.

Because the area that the chairs were brought into was a little visible which could if it were piled incorrectly could block a fire exit so I said, Donald if you cannot put it there, just move it into the front lobby and leave it there.

Q Was it done that way?

A It was done by Mr. Thomas Romayne when he was on.

Many nights not by Don -- by Don O'Toole.

Q Did you appoint Donald O'Toole a shop stewart?

A No, sir.

Q Did you recommend his appointment as a shop stewart?

A No, sir.

Q Did you ever tell Donald O'Toole that you were dissatisfied with his -- with his actions on behalf of Local 1115?

A There was only one time when I got my first written notification --

Q No, I asked you did you say this?

A I am sorry.

I am sorry.

Q Did you tell Mr. O'Toole that you were dissatisfied with his actions on behalf of Local 1115?

A I would like to explain -- can I explain that?

Q You can answer and explain.

A All right.

On one occasion when I arrived at Gloria's Manor and when Donald O'Toole was punched out, he had -- the people were yelling that it's past 8:30 in the morning and they had not been called in for breakfast.

I went into the kitchen to see why they were not called in for breakfast and I found a meeting with Donald O'Toole and my dishwashers, a number of my waitresses, and I looked around and my chef yelled, well, how can they make breakfast when they have got a union meeting over here and I said to him what kind of union meeting, and my chef said to me they

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are talking 1115 and I said to Don, if you concentrate more on your work than about holding up the -- the operations of Gloria's Manor you will be better off.

This is the only time that I had a discussion with Donald O'Toole in reference to union -- to anything outside -- after he was punched out and was suppose to have left the premises.

Q Did you ever tell Mr. O'Toole that you had given five dollars to an employee to go to a meeting which was being conducted by 11 -- by Local 1115 to ascertain which employees were attending the meeting?

A Absolutely not.

Q Did you ever tell anybody to report to you who were attending meetings for either Local 4 or Local 1115?

A I --

Q Yes or no?

A Absolutely not.

I had a contract with Local 4 there -- I am sorry --

Q Did you have a list of employees who attended any meeting on behalf of Local 115 and showed this alleged list to Mr. O'Toole?

A No, I did not.

Q Did you ever question Mr. O'Toole about any meeting

that he or others attended that were conducted by Local 1115?

A No, I did not.

Q Did you ever tell Mr. O'Toole that he could be discharged of any activities that he was engaged in on behalf of Local 1115?

A No, I did not.

Q Now, Mr. O'Toole testified that you showed him what purports to be G.C. Exhibit 3 in evidence.

I show you that document and ask you if you have ever seen this document before?

(Handing document to witness.)

A No, sir.

Q Did you ever show him that document or anything purporting --

A No, sir.

Q -- to represent that document?

A No, sir, I never saw it.

Q I show you G.C. 2 in evidence.

I ask you have you ever seen this document before?

(Handing document to witness.)

A No, sir.

Q Mr. O'Toole claims that you showed him what purports to be G.C. 2 in evidence to him on a certain date in 1974.

Is that true?

A I never saw these.

I didn't -- I had nothing to show him.

Q Just answer whether it's true or not?

A No, I never showed him these.

I never had them.

Q At the time that you discharged Mr. O'Toole did you request him to sign a document admitting the reasons for his discharge?

A No, the reason I hesitated --

Q Please I haven't asked you a question.

A Okay.

Q Did you ever offer Mr. O'Toole two hundred dollars to come back to work?

A No, sir.

Q Or offer him $200 not to come back to work?

A No, sir.

Q Did Mr. O'Toole ever refuse to bring in the outdoor furniture?

A He never refused.

Q Did you ever tell Mr. O'Toole that he was not doing you any good and was costing you a bundle of lawyer's fees?

A No, sir.

Q Did you ever tell Mr. O'Toole that Local 1115

was a cause of your problems or he was -- did you ever tell him that?

A I am sorry.

Q I will read it again.

Did you ever tell Mr. O'Toole that Local 1115 was the cause of your problems --

A No, sir.

Q Or that you are going to fire him because of his activity on behalf of Local 1115?

A No, sir.

Q Did you ever tell Mr. O'Toole after he was discharged that because of his involvement with Local 1115 you couldn't hire him?

A No, sir.

MR. SCHWARTZ: I have no further questions of this witness, if Your Honor pleases.

JUDGE SARRICA: I have observed that you have been very diigent in trying to cross check a lot of that information.

At this stage are you -- do you feel still unprepared to cross examine this witness?

MR. REICH: I am prepared with respect to one significant date that I have gotten some information on, to wit, March the 12th.

JUDGE SARRICA: Do you wish to proceed then with

that?

MR. REICH: Reserving my right to renew my motion.

JUDGE SARRICA: Yes.

MR. REICH: Thank you.

CROSS EXAMINATION

Q (By Mr. Reich) Mr. Hagler, I realize from your testimony that you are not the most conversant person with respect to the payroll records.

A That is a fact.

Q We have established one thing.

I also understand however that by virtue of your being a witness, some of these records have been introduced in evidence and you are the head of the Home and you are familiar with some of the operations of the Home, is that right?

A Yes.

Q If you know, was there ever a time when more than once a month dues or initiation fees were taken out of the salaries of any employee for the union?

A I don't know.

Q Well, will you look through the month of March and see how many different payroll periods, if any, there were deductions made for dues and initiation fees?

A According to my books, there are two weeks during -- two weeks during March that there were deductions, taken off for dues or initiations.

Q What weeks were they?

A According to my books, they read the week ending March 12th.

Q Yes?

A And the week ending March the 19th.

Q On the week ending March 19th there were two items deducted, is that right?

A Right.

There were two, right.

Q Now, all the -- the bulk of the deductions were all made the week of March the 12th, is that right?

A That's what it seems to indicate.

Q Incidentally, just to clarify it, the two deductions for March 19th was a five dollar item for Eileen Carey, is that correct?

A That's what it seems to indicate.

MR. REICH: Withdrawn.

A No.

Q Yes?

A Yes, I don't --

Q Follow me, please.

A Yes, Eileen Carey.

Q And the one dollar deduction for Mary McGowan, is that correct?

A Yes.

Q Are those the two?

A Yes.

Q For those amounts -- I realize you are not the bookkeeper, you can determine, can you not, that they are both initiation fee deductions rather than dues deductions?

A Yes.

Q The standard dues deductions was how much a month?

A Six dollars a month.

Q So forgetting those for the moment and concentrating on March the 12th, it's a fact, is it not, that there is no deduction for David Frankel?

A Right.

Q David Frankel was your cook supervisor in the kitchen, is that right?

A Yes.

Q David Finkle is the first name on the payroll is it not?

A Yes, it is.

Q It's a fact is it not that there is no deduction shown for James Green, is that correct?

A No, there is none.

Q By looking at the records can you determine if James Green was employed by you before the 5th of March?

A Before the 5th?

Q Before?

A So this is the week ending the 5th --

Q I mean before the week ending March the 5th?

A Yes, he was employed.

Q Was he employed before the week ending of March 5th, is my question?

A No.

Q So that as of March the 12th James Green had been there less than 30 days, is that right?

A That's what it would indicate from the books, yes.

Q Now, we have the deductions for Tim McGeary?

A Yes.

Q Now, we have the deductions for Tim McGeary?

A Yes.

Q Tom O'Toole?

A Yes.

Q And then there is no deduction for John Breen --

A That's right.

Q -- is that right?

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A Yes.

MR. REICH: All right.

May I have a moment, Your Honor?

JUDGE SARRICA: Yes.

Of course.

MR. REICH: Thank you.

MR. EISENBERG: Mr. Reich, how long are you going to be?

MR. REICH: You need what?

MR. EISENBERG: A moment.

How long --

MR. REICH: Until I find the paper that I had a moment ago.

Why do you need a recess?

MR. EISENBERG: No, I want to take a drink of water.

MR. SCHWARTZ: Go ahead.

JUDGE SARRICA: Off the record.

(Discussion off the record.)

JUDGE SARRICA: Back on the record.

Q (By Mr. Reich) Incidentally, looking at the payroll record, particularly now for the week ending March 12th, 1975, I see what purports to be signatures here.

Can you explain those?

A Yes.

We draw one large payroll check and we put the cash into envelopes and before my bookkeeper releases it she asks for the recipient of the money to sign that they received the money.

Q So the various writing of names there are the signatures of the respecitive people on the lines which indicate the amount of their pay, deductions, et cetera, is that correct, sir?

A That's correct.

Q All right.

Now, incidentally, we are speaking of John Breen a moment ago, and does a signature of John Breen appear on the pages for the week ending March 12th, 1975?

A Yes, it does.

MR. REICH: Now, I show you a piece of paper which I am going to ask be marked Respondent Union's Exhibit -- how does 5 strike you, Judge?

JUDGE SARRICA: Well, I was thinking 5 was identified on an affidavit here.

MR. REICH: I will take 6.

MR. EISENBERG: Aren't we up to 4 with Respondent Union, that's my guess?

JUDGE SARRICA: Okay.

MR. SCHWARTZ: So stipulated.

JUDGE SARRICA: The stipulation is received and Respondent Union's Exhibits 4, 5, 6, 7 and 8 are accepted pursuant thereto.

(Whereupon, Respondent Union's Exhibits 4,5,6,7 and 8 were received in evidence.)

Q (By Mr. Reich) Mr. Hagler, when you were being questioned -- I think it was yesterday -- by counsel for the General Counsel you were asked with respect to the payroll for the week ending June 18th, 1975 -- withdrawn.

When you were being questioned yesterday with respect to the payroll of June 18th, 1975, it was pointed out, if I recall correctly, that there appeared to be no initiation fees deducted from Tim McGeary, Tom O'Toole, Mary Duffy, Barbara Davis, Eileen Carey and Steve Donahue.

Do you recall that, sir?

A Yes.

Q Now, taking them one at a time, it's a fact, is it not, that with respect to McGeary there was an initiation fee deduction in the ensuing month of July?

A Yes.

Q With respect to O'Toole, it's a fact, is it not,

May I have that marked as General Counsel's Exhibit Number 23, I believe, for identification.

(Whereupon, the above described document was marked as General Counsel's Exhibit 23 for identification.)

JUDGE SARRICA: Did I correctly understand that Mr. Schwartz that you are willing to stipulate those two documents into evidence?

MR. SCHWARTZ: I will stipulate to nothing.

When he makes accusations that aren't true, he doesn't get my cooperation for anything.

REDIRECT EXAMINATION

Q (By Mr. Eisenberg) Mr.Hagler, I show you General Counsel's Exhibit 23 --

MR. SCHWARTZ: Before you do that may I see it?

MR. REICH: May I see it, please?

MR. EISENBERG: Oh, certainly.

(Mr. Eisenberg handed document to Mr. Reich and Mr. Schwartz.)

MR. REICH: Thank you, sir.

Q (By Mr. Eisenberg) Mr. Hagler, I show you General Counsel's Exhibit 23 for identification.

Could you identify that document?

(Handing document to witness.)

MR. REICH: Objected to, improper redirect examination.

Neither on direct examination nor on cross examination has that document been alluded to.

JUDGE SARRICA: I will overrule the objection.

A What was your question, sir?

Q Could you identify the document?

A Yes.

Q Would you identify it?

MR. REICH: He answered that question that he could identify it.

JUDGE SARRICA: I think he asked him would he.

MR. REICH: I object to it, Your Honor.

MR. EISENBERG: I will do it another way.

JUDGE SARRICA: Thank you.

Q (By Mr. Eisenberg) Isn't in fact this letter a letter from you on Gloria's Manor stationary addressed to Local 4?

MR. REICH: Objected to, referring to something which is not in evidence and assuming a state of facts not in evidence.

MR. SCHWARTZ: That is a letter -- a copy of a letter that I received, it's from my file.

MR. EISENBERG: Would you -- has there been a ruling on the objection?

MR. SCHWARTZ: I object to it.

It's my letter, my copy of my letter that's

in my file.

JUDGE SARRICA: That's the basis of your objection?

MR. SCHWARTZ: Yes, ma'am.

JUDGE SARRICA: That's overruled.

I want to hear Mr. Reich's objection again.

(Record read.)

JUDGE SARRICA: Will you please change your inquiry.

Q (By Mr. Eisenberg) Could you identify the document?

MR. REICH: Objected to.

MR. SCHWARTZ: I object.

The question was asked and answered.

Q (By Mr. Eisenberg) Will you please identify that document, tell us all what that document is?

MR. SCHWARTZ: Objection.

MR. REICH: Objected to.

JUDGE SARRICA: Overruled.

Let's get on with it.

A This is a letter that was signed by me written on Gloria's Manor's stationary.

Q To whom, please?

A To -- it reads Medical and Health Employees, Union Local 4 AFL-CIO, 8652 Queens Boulevard, Elmhurst, New York.

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Q Did you sign that letter?

A Yes, I did.

Q Did you prepare -- did you read that letter before you signed it?

A Yes.

MR. EISENBERG: I offer it in evidence as General Counsel's Exhibit 23.

MR. SCHWARTZ: Objection.

JUDGE SARRICA: What basis?

MR. SCHWARTZ: This is a letter from my file that I received, and I don't know the purpose of him introducing that letter -- as -- if he wants to say that this is a letter that I received from Mr. Hagler and that's the purpose of it, I have no objection.

But other than that, I object to the entry of this document.

JUDGE SARRICA: Do you have an objection?

MR. REICH: Yes, but if you are going to sustain his, then I will safe myself the trouble of making mine.

JUDGE SARRICA: All right

Rejected.

MR. SCHARTZ: Pardon me?

JUDGE SARRICA: Rejected.

MR. SCHWARTZ: The letter is rejected?

JUDGE SARRICA: No, rejected -- your objection is rejected.

Overruled.

MR. REICH: Your Honor, I object to it on the ground that first it's improper at this time.

Second, that it is not relevant in that there has been no connection as to who is the subject of this letter and unless this letter is tied up in some fashion with something relevant to this case, of necessity it is immaterial and on its face it does not indicate whom is involved.

JUDGE SARRICA: I will overrule your objection.

MR. REICH: I respectfully accept.

JUDGE SARRICA: Yes.

General Counsel's Exhibit 23 is received.

(Whereupon, General Counsel's Exhibit 23 was received in evidence.)

MR. EISENBERG: I ask that this document be marked as General Counsel's Exhibit 24 for identification.

(Whereupon, the above described document was marked as General Counsel's Exhibit 24 for identification.)

Q (By Mr. Eisenberg) I show you General Counsel's Exhibit 24 for identification.

MR. SCHWARTZ: May I see that before you show it to him?

MR. EISENBERG: I will withdraw the last comments.

JUDGE SARRICA: Yes.

(Mr. Eisenberg handed document to Mr. Schwartz and Mr. Reich)

MR. REICH: Thank you.

(Mr. Reich handed document to Mr. Eisenberg.)

Q (By Mr. Eisenberg) I show you General Counsel's Exhibit 24 for identification, Mr. Hagler.

Can you identify it?

(Handing document to witness.)

A This seems to be a letter that was addressed to me.

Q Did you ever see it before?

A Yes.

Q When did you see it?

Around March 3rd, right?

A Somewhere at the end of February, the beginning of March.

Q Who sent you that letter?

MR. REICH: Objected to, Your Honor.

Improper redirect examination.

MR. SCHWARTZ: That happened to be --

JUDGE SARRICA: Excuse me.

That objection I ruled on.

MR. REICH: With respect ot this, I didn't make objection before, Your Honor.

JUDGE SARRICA: All right.

Overruled.

MR. SCHWARTZ: If Your Honor pleases, that happens to be a copy of a letter that I received from Mr. Hagler, it's part of my file, it's priveleged communication between an attorney and a client.

JUDGE SARRICA: I understand your objection.

I will overrule your objection.

Q (By Mr. Eisenberg) Do you remember the question?

A No, would you please repeat it?

MR. EISENBERG: Mr. Reporter, would you please read the question?

(Record read.)

MR. REICH: That's objected to as calling for speculation and a guess.

JUDGE SARRICA: Will you inquire who the letter is from?

Q (By Mr. Eisenberg) Who is theletter from -- it's a copy of a letter.

MR. REICH: I object to that.

The letter, if admissible, speaks for itself.

JUDGE SARRICA: Overruled.

MR. REICH: Exception.

A The heading of the letter reads, Medical and Health Employees Union Local Number 4.

Q Who is the letter addressed to?

MR. REICH: Objected to.

The letter, if admissible, speaks for itself.

Your Honor, we have -- we are speaking of a document here.

JUDGE SARRICA: He is identifying the document that he has in his hand.

Overruled.

A It's addressed to Gloria's Manor, 140 Beach 119th Street, Bell Harbor, New York, 11694, Mr. Joseph Hagler, the following --

Q That's quite sufficient.

MR. EISENBERG: I offer this into evidence as General Counsel's Exhibit 24.

MR.SCHWARTZ: Objection.

This is a copy of a letter, it's not the best evidence, there is writing on it that I don't know who put in and it's my property, it's priveleged because it's an attorney/client privelege and for these reasons I object to the admissibility of this document.

JUDGE SARRICA: Overruled.

MR. REICH: I object ot it solely on the ground that it is improper redirect examination.

JUDGE SARRICA: Overruled.

MR. REICH: Then I have no other objection.

JUDGE SARRICA: General Counsel's Exhibit 24 is received.

(Whereupon, General Counsel's Exhibit 24 was received in evidence.)

Q (By Mr. Eisenberg) Mr. Hagler, I want to direct your attention to the functions of security personnel you employ at Gloria's Manor who work at night.

Now, you testified that they must make rounds.

How do they make rounds?

A They have a detex -- they have a detex clock in which they go ever -- every hour -- every hour to punch it and it takes them through various parts of the buildings.

Q How many detex clocks do they have to punch?

A One clock.

Q One clock.

How big is Gloria's Manor -- withdrawn.

Can you describe how many stories Gloria's Manor is?

A Four stories.

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JUDGE SARRICA: Overruled.

Q (By Mr. Eisenberg) How long does it take you to go from one length of the building to the other assuming you make no stops?

MR.SCHWARTZ: Objection.

JUDGE SARRICA: Overruled.

A I never timed it.

Q Where does -- where does the security man have to go in making rounds once an hour in that building, can you describe the route he has to take and what he is supose to check?

A He has to go to different parts of the building.

Q Can you be specific?

A Wherever he has to punch the clock.

Q Where is that -- there is more than one clock, he has to punch more than one clock -- one detex clock?

A There is one clock.

Q Tell me where he has to go, what's he do from the minute he leaves the switchboard until he gets back to the switchboard, what have you told him to do?

A He has to check the -- the building.

Q Have you ever seen him do it, any security personnel do that?

MR. SCHWARTZ: Objection unless we know who he is talking about.

JUDGE SARRICA: Sustained.

Q (By Mr. Eisenberg) I ask you again Mr. Hagler, you keep telling me he has to check the building, what does he do?

MR. SCHWARTZ: What does who do?

MR. REICH: Who is he?

MR. EISENBERG: A security operator --

MR. REICH: Objected to --

MR. EISENBERG: -- when he makes rounds.

MR. REICH: Immaterial, irrelevant, incompetent and indefinite.

JUDGE SARRICA: Overruled.

MR. SCHWARTZ: Can we identify the individual he is speaking about, if Your Honor pleases?

JUDGE SARRICA: He is speaking now about a particular job as the question indicates.

MR. SCHWARTZ: Not about a particular individual.

JUDGE SARRICA: The record will so indicate.

MR. SCHWARTZ: Well, I think the record should indicate that there are more than one person doing that job.

JUDGE SARRICA: It's already indicated by the record.

MR. SCHWARTZ: Thank you, Your Honor.

JUDGE SARRICA: You are welcome.

Q (By Mr. Eisenberg) Do you remember the question, Mr. Hagler?

A No.

No, I don't.

MR. EISENBERG: Would the Reporter please read the question back?

(Record read.)

A He goes from one side of the building to the other side of the building.

Q On one story or all -- or on all four floors?

A On all four floors.

Q Does he go to any specific areas of the building?

A There are two staircases on each end of the building, he walks from one end to the other and he goest out into the staircases.

Q What else is he suppose to do, anything?

He just goes through the hall?

A That's all.

MR. SCHWARTZ: Which question?

There were three questions?

MR. EISENBERG: I will withdraw it.

JUDGE SARRICA: Thank you.

Q (By Mr. Eisenberg) Do you know the route he

ould take?

MR. SCHWARTZ: Objection.

The route who would take, he would take?

Who are we talking about?

MR. EISENBERG: The one who occupies the position of security personnel working at night who makes rounds.

A The exact route, no.

Q Does he -- does anybody make rounds in the morning?

A No.

Q No?

A No.

Q You don't make rounds in the morning?

A No, sir.

MR. SCHWARTZ: Objection, that's argumentative, if Your Honor pleases.

JUDGE SARRICA: Overruled.

Q Isn't it required that rounds be made 24 hours a day by State law?

A No, sir.

Not in an adult home.

Q Where is this detex clock?

A It stays by the switchboard operator.

Q How many times must it be punched -- punched during

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the course of one round?

A Once.

Q Do you know how long it takes for an individual to make rounds?

A No, sir.

Q But he has go to go through a whole building, right, four floors, up and down stairs the steps?

A Not --

MR. SCHWARTZ: Objection, it's been asked and answered.

JUDGE SARRICA: Overruled.

A He does not go via steps, he goes via elevator.

Q He doesn't go up and down the steps?

MR. SCHWARTZ: Objection.

MR. EISENBERG: I thought he testified he did go up and down the steps.

A I said --

MR. SCHWART: Objection.

JUDGE SARRICA: What's the basis for the objection?

MR. SCHWARTZ: He already testified he takes the elevator and doesn't go up the steps.

JUDGE SARRICA: He also testified he went up the steps.

MR. SCHWARTZ: I didn't hear that.

I heard him testify that he --

JUDGE SARRICA: The record will show what he testified to but I will allow this question.

THE WITNESS: No, ma'am, I can clarify that.

JUDGE SARRICA: All right.

THE WITNESS: I said he goes from one side of the building where there is a set of stairs -- staircase to the other side but I didn't say that he uses the steps.

There are two sets of staircases and he walks the length of the building and then he uses the elevator to go -- to go down to the next step -- flight -- to the next floor.

JUDGE SARRICA: Thank you.

Proceed.

Q (By Mr.Eisenberg) Did you at anytime give Mr. O'Toole -- Donald O'Toole -- strike that.

Donald O'Toole at the time he first became employed or at times thereafter and/or Mr. Thomas Romayne instructions on how to make rounds?

MR. REICH: Objected to as being a multi-headed question.

A Did I give --

JUDGE SARRICA: Overruled.

A Yes, I did.

Q What did you tell them?

A That they have to check the building.

Q Did you tell them anything more specifically?

A About security?

Q About making rounds?

A About making rounds, they are to punch the clock and to come back to the switchboard.

Q You just told them they had to check out the building?

A Right and --

Q Nothing more specific than that?

MR. SCHWARTZ: If Your Honor pleases, let the witness answer the question.

MR. EISENBERG: I believe the witness answered --

THE WITNESS: I am sorry, may I --

JUDGE SARRICA: Yes.

THE WITNESS: -- answer it and explain it?

JUDGE SARRICA: You may answer.

A He has to go from one side of the building to the other side of the building.

That's what I told him, on all floors.

Q And do what?

A That's all.

Q Is he to look at anything or look for anything?

A Just if he hears anything.

Q He doesn't look at anything?

A No.

Q He is away from the switchboard when he does that, isn't he?

A Yes, he is.

Q Did you ever give instructions for how the switchboard is to be handled in such an instance?

MR. REICH: I object to the form of the question dealing not only with the word ever but also with to whom such instructions were given.

JUDGE SARRICA: Be more specific in your questions, please.

Q (By Mr.Eisenberg) Did you ever tell the security person -- security personnel that make rounds at night what to do when they have to leave the switchboard to make rounds?

MR. REICH: That's objected to as immaterial.

We don't know who the security personnel is or are.

Q (By Mr. Eisenberg) Did you ever tell Donald O'Toole what he is suppose to do when he goes to make rounds?

A For the short period of time that it should take to leave it alone.

JUDGE SARRICA: To leave what alone?

Q To leave what alone?

A To leave the board unmanned.

JUDGE SARRICA: All right.

Q Was Mr. O'Toole allowed to go to the men's room if he was sitting at the switchboard during the night when he wasn't making rounds?

A I imagine if any human being has to go to the men's room they can go.

Q Did you ever --

A Or to the ladies room.

Q -- did you ever give him instructions if that might happen?

A It was never asked.

Q When is it -- when did Donald O'Toole when he was working in this position as security person and switchboard operator come to work normally?

A About ten o'clock.

Q When was he suppose to go on, on his job?

A When he punched in at ten o'clock.

Q At ten o'clock?

A Yes, sir.

Q And when was he supose to leave?

A In the morning.

Q What time?

A Somewhere between 7 and 8 o'clock in the morni...

to the best of my knowledge.

Q Now, didn't you testify you gave him instructions during the first half hour he punched in that he could get something to eat during that time?

A Yes, I did.

Q And then presumably he would work from 10:30 to 7 or 8 all night, right, at the switchboard and making rounds?

A Right.

Q Did you ever give him instructions that he couldn't eat or have a snack during the course of those nine hours or so?

A I gave him permission at the -- we discussed it and it was agreed that he would eat at the switchboard.

Q Wouldn't he have to leave the switchboard to get food?

A No, not necessarily.

Q Suppose he wanted to eat at 4 o'clock, what was he suppose to do?

MR. REICH: I object to as hypothetical.

Q Did you ever give him instructions as to what he was suppose to do?

MR. SCHWARTZ: The question was asked and answered if Your Honor pleases.

A The only instructions I gave Donald O'Toole --

JUDGE SARRICA: Overruled.

A -- was -- the only instructions I gave to Donald O'Toole was to eat at the switchboard.

Q Nothing else?

A And not to leave it unmanned.

Q That probably would be impossible, isn't it?

MR. SCHWARTZ: Objection, argumentative.

Q He had to -- he'd have to go somewhere to get food?

MR. SCHWARTZ: Objection.

A He never complained --

MR. SCHWARTZ: Hold it.

THE WITNESS: I am sorry.

MR. SCHWARTZ: I think the question is argumentative. For that reason, I object.

JUDGE SARRICA: Overruled.

Q (By Mr. Eisenberg) But you never gave him any instructions?

A He never complained to me that he couldn't get his food.

Q All right.

Now,you had indicated that you had certain complaints that furniture was stolen.

When was the first time you heard of such complaint?

A I would say towards the -- to the best of my recollection the end of July or the beginning of August.

MR. REICH: What year?

Q Did you have more than one complaint during that general period of time?

A I had a number of complaints.

I bought X amount of chairs and I had X minus chairs, so I knew what I had.

Q How did you know that Donald O'Toole was on the night before you received the complaint?

A The same way I knew taht any of my other employees were working that time, they were scheduled to work and they punched in.

Q And you talked to Donald O'Toole about this problem, right?

A I certainly did.

Q Who complained to you about these chairs being stolen or missing?

A Who complained to me?

Q Yes.

You said you received complaints.

Who complained to you?

A Complained to me was the morning -- the morning

boy that was -- that put them out and what I noticed myself.

In other words, the morning porter said that there are missing chairs and those that I counted myself were missing.

Q How many chairs were normally outside?

A There were seven -- seven double beach chairs and 12 metal chairs.

Q When was Donald O'Toole suppose to take those chairs in?

A Between 10 and 10:30 while the switchboard operator was working.

Q And he was suppose to eat between 10 and 10:30 also?

A I didn't say that.

Q You didn't?

A I said he was to eat at the switchboard at his convenience or whenever he felt it was -- it was proper for him to eat or when he could eat.

Q I see.

Did Donald O'Toole have any other functions as a security operator?

A That's right.

He had -- he certainly did.

Q What were they?

A He had to -- let's see -- close the gates for security purposes.

Q Let's stop there for one minute.

A Yes.

Q When was he suppose to close the gates?

A Between 10 and 10:30.

Q I see.

A There are two gates to be closed.

Q And the same side - - next to each other or one -- or on one side of the building as opposed to another side -- where are the gate located?

A Adjacent to the building is one gate and on the other end is the other gate.

Q I see.

When did you receive complaints that Mr. O'Toole was not on the switchboard?

A When I came to Gloria's Manor the morning and when a number of residents told me that they tried to reach him and -- they tried to reach him at all different times and hours of the night.

Q Can you fix a date when you had the first complaint?

A Somewhere in the end of July or the beginning of August.

Q Did you receive another complaint?

A Yes, I did.

Q When did you receive that?

A A short time after the first complaint.

Q Did you receive a third complaint?

A I don't recall.

Q Two complaints then, right?

A Two complaints that I remember.

Q Right.

With respect to Thomas Romayne, when did you hire him?

A I don't recall.

Q Did he work during the same time Donald O'Toole worked, the period of time -- is he employed now?

A No.

Q When did he cease being -- being employed?

MR. SCHWARTZ: Objection, immaterial.

MR. EISENBERG: I will withdraw the questinn.

Q (By Mr. Eisenberg) Did you ever have any complaints about Thomas Romayne?

A No, sir.

Q Never -- he never left the switchboard?

A He was -- I never got any complaints.

Q Chairs weren't found missing at anytime when he was on duty?

A No, sir.

Q How many days during a week was Thomas Romayne

on duty?

A To the best of my knowledge, I would say either two or three days.

I don't recall.

Q How many days was Donald O'Toole on duty?

A The balance of the time.

MR. EISENBERG: I have no further questions.

JUDGE SARRICA: Does the Respondent Employer have any recross?

MR. SCHWARTZ: Yes.

RECROSS EXAMINATION

Q (By Mr. Schwartz) Who did you get complaints from concerning Donald O'Toole?

JUDGE SARRICA: In this respect we are now again in redirect in the sense --

MR. SCHWARTZ: Oh, Mr. --

JUDGE SARRICA: I mean the area that he has covered is only because I permitted you to do part of your direct examination and so that you are --

MR.SCHWARTZ: I didn't consider it part of my direct.

JUDGE SARRICA: I did.

This is why I permitted it and why you are on redirect.

MR. SCHWARTZ: With all due respect to Your Honor

for the record, I say I didn't consider that part of my direct.

I consider it part of my cross.

JUDGE SARRICA: I ruled however it would be part of your direct.

MR. SCHWARTZ: I understand but I still would like the privelege of having the record reflect my feelings.

JUDGE SARRICA: That you didn't agree with my ruling?

MR. SCHWARTZ: Yes, ma'am.

JUDGE SARRICA: However, that was how we proceed?

MR. SCHWARTZ: Yes.

JUDGE SARRICA: Thank you.

MR. SCHWARTZ: And I assume now I can cross examine the witness concerning the testimony --

JUDGE SARRICA: The entire testimony was by way of cross examination of the direct examination that you elicited from this witness and therefore I am asking you if you will examine him as though he were your witness, if you -- if you have any examination of him at this time.

Q (By Mr. Schwartz) Who complained to you concerning Mr. O'Toole? Specifically do you remember?

A Yes.

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Q Who?

A A Mr. Martin Westheimer.

Q Who else?

A And Mrs. Dora Feifer. Mr. Sidney Silver.

Q What did the first gentleman say to you concerning Mr. O'Toole.

A The first gentleman is who, sir?

Q The first gentleman you mentioned what did he say?

A Mr. Martin Westheimer, I am sorry?

Q Yes.

A Mr. Martin Westheimer told me that when he -- his words,you can die up, I know when he makes his rounds and I make sure I don't call at that time and no matter I can't get him on the telephone.

Q What about the next gentleman you mentioned?

A Mrs. Feifer, that was a lady that on one occasion said to me that she needed an ambulance very badly and was not able to get through to the switchboard when she was trying all night.

Q Did she tell you how many times she had attempted to contact the switchboard operator?

A She said out -- she said eight ot ten times.

Q And who was on duty that night?

A Mr. O'Toole.

Q Who else did you mention complained to you?

A Mr. Sidney Silver.

Q What did he tell you?

A He told me that he needed help because he had -- he had a hard time breathing, he has a pace maker and that he tried practially all night, to reach the switchboard operator and he could not get a response.

Q Now, you testified when you were asked by Mr. -- by counsel for the General Counsel concerning ten o'clock when Mr. O'Toole came on duty, and if I understood your testimony, it was to the effect that when Mr. O'Toole came on he would go to the kitchen and prepare his meal for the evening?

A I said that he had the option of either going to the kitchen to prepare his meal -- to get a prepared meal which the chef had left for him or bring his own food in to eat at the switchboard.

Q All right.

Now, if he decided to take the prepared meal, how would he -- how -- when would he eat this?

A I have no idea when he would eat this.

He would eat this at the switchboard during -- sometime during the course of the evening.

Q Would he be permitted during the course -- during the middle of his duty to go to the kitchen and then prepare himself a meal?

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A No.

Q That was contrary to your instructions?

A Yes.

Q Did you speak to Mr. O'Toole about furniture that was missing?

A Yes, I did.

Q Can you tell us approximately when this occurred?

A Again, it must have been either the end of July or the beginning of August.

Q When he -- when you told him this,what did he say to you?

A He says I don't know anything about it, he told me.

Q What did you tell him?

A I told him that it was missing at the time that he was on duty and that -- that I am holding his responsible for it.

Q Do you kjow whether the furniture was brought in that night or left out?

A I have no idea.

Q Did you get complaints concerning Mr. O'Toole leaving furniture outside without bringing it in pursuant to your instructions?

A Yes. from -- yes.

Q How many times did this occur to your knowledge?

A A number of time.

I don't know three, four, five times.

I don't recall.

Q Did you speak to him about --

A I certainly did.

Q Who did you get the complaints from about the furniture being left outside?

A From a Mr. Sidney Silver.

Q Now, with respect to the gates that you mentioned had to be closed, what -- at ten o'clock, what was involved in the closing of these gates?

A Taking two swinging gates, bringing them forward, and a lock which was already in the latch, just to close the lock on it.

Q Did you ever do this yourself?

A Yes.

Q How long would it take you to close two gates -- two locks?

A 60 seconds.

Q I am talking about on each end of the --

A Each door?

Q Each door?

A A minute.

Q All right.

How far was one gate from the other?

A Again, I don't know the distance but it was the -- across -- it's like a through street between 119th and 118th Street.

A very short period of time.

Two minutes to walk, perhaps.

Q With respect -- with respect to G.C. 24 in evidence which is my copy from my file can you tell us the events surrounding the receipt of that document?

(Handing document to witness.)

A Yes.

Q Please do?

A The letter -- this letter was sent to me by Local 4.

Q Did you request -- did Local -- strike that.

Did Local 4 make an oral demand upon you for the discharge of those five persons or six persons appearing on that --

A Yes.

Q -- document?

A Yes.

Q And did you reply to that demand?

A Yes.

Q What did you say?

A This happened on Friday, on a Friday prior to March 3rd.

Q What did you tell them?

A I told them that I would not accept this request without a letter in writing.

Q And purusant to that they sent you or you received a document?

A Yes.

Q With respect to G.C. 23 dated February 2tth which again is a copy of a letter coming from my files, do you recall any conversation with any person other than that bringing about that letter?

(Handing document to witness)

Did you have any conversation with your attorney concerning the demand?

A Yes.

Q About a union authorization card and deduction of wages?

A I called my attorney and I told him that I had a delegate from Local 4 down at Gloria's Manor, and that he met with my bookkeeper and I was called in to the meeting and said that he had a number of employees that he checked the time cards, and he found that according to his check off list he had not had authorization cards from a number of

employees, and that they must pay -- they must be -- they must be -- they must have signed authorization cards.

Q Did you -- did you -- what did you do when you received that communique?

A Yes, if I don't have authorization cards from them, I have to dismiss them.

MR. REICH: I move to strike the answer and I object to the question as being a conversation between this witness and his attorney which has no bearing upon the Respondent Union.

JUDGE SARRICA: Granted.

MR. SCHWARTZ: No further questions.

Do you want to put that in an abtitration award?

MR. EISENBERG: I will stipulate that it be put in.

MR. SCHWARTZ: Will you stipulate to this?

MR. REICH: Yes, sir.

MR. SCHWARTZ: If Your Honor pleases, I offer by way of stipulation between the parties an opinion award in an arbitration matter before the New York State Mediation Board in Case Number A74-821 between the employer Gloria's Manor and Local Number 4, Medical and Employees Union AFL-CIO which reflects an opinion award -- an opinion and award by Nathan

Cohen Arbitrator, on October 31, 1974 involving the discharge by the employer of Donald O'Toole, Robert Rothenberg and Grace Rasch.

JUDGE SARRICA: I will have it marked as Respondent's Exhibit Number 7.

(Whereupon, the above described document was marked as Respondent's Employer Exhibit 7 for identification.)

JUDGE SARRICA: Do I understand that the parties have stipulated to receive that in evidence?

MR. EISENBERG: So stipulated on behalf of General Counsel.

MR. REICH: Yes, Your Honor.

JUDGE SARRICA: Thank you.

Respondent's Exhibit 7 received in evidence.

MR. REICH: Your Honor, in connection with Respondent's Exhibit 7 received in evidence I offer and I propose a stipulation to all the other parties and I call your attention to the fact that I was not involved in this arbitration, nevertheless I offer a stipulation that Nathan Cohen the arbitrator who acted in this proceeding is a well known arbitrator in this area, having a history of having been employed by the National Labor Relations Board and then by the New York State Board of Mediation and being a

Whereupon,

MARY DUFFY

having been called as a witness, and having been first duly sworn by the Judge, was examined and testified as follows:

JUDGE SARRICA: You may be seated.

DIRECT EXAMINATION

Q (By Mr. Schwartz) Mary Duffy, can you tell us where you reside?

A I live at 160 Beach 24th Street, Rockaway Beach.

Q By whom are you employed?

A Mr. Hagler at Gloria's Manor.

Q How long have you been so employed?

A Since April of 1974.

Q In what capacity?

A I am a receptionist and switchboard operator.

Q Do you know a person by the name of Donald O'Toole?

A Yes, I do.

Q How do you know Donald O'Toole?

A Donald worked in Gloria's Manor the same time I did.

Q What was his job, do you know?

A The first time he was a dishwasher I believe in the kitchen and after that he beaame the night man.

Q Do you know Joseph Hagler?

A Yes, I do.

Q Is he your boss?

A Yes, he is.

Q Did he ever give you instructions with respect to the work being performed by Mr. Donald O'Toole?

A Yes,he did.

Q When was this?

A Mostly in the evening because I only work at night.

Q What is your shift by the way?

A Excuse me?

Q What is your shift by the way?

A Now or then?

Q Then?

A I worked four nights a week.

Q When did you work?

A I worked from 4 to 10:30.

Q And was Mr. O'Toole working a shift to your knowledge?

A After a while he was, yes, there was occasions where I worked with Donald, yes.

Q I see.

Now, getting back to any instructions that Mr. Hagler, Joseph Hagler gave you --

A Yes.

Q -- can you recall when these instructions were given and where?

A Right after -- before Mr. Hagler would leave he would come over -- which he does always, comes over to the switchboard, and whatever he wants the person that's working that night to do, he would tell us.

Q I see.

And during the period that Donald O'Toole was working there --

A Yes.

Q -- did Mr. Hagler ever leave instructions with you for Mr. O'Toole?

A Yes.

Q What were these instructions?

A Well, he would tell me to make sure that Donald took in the chairs, and that Donald closed the gate and that he would sit by the switchboard in case anybody was sick and needed attention.

Q Did you pass these instructions on to Mr. O'Toole?

A Yes, I did.

Q Do you know what Mr. O'Toole's major function was in his course of employment?

A You mean what he had to do?

Q Yes.

A When he came in he would clock in and he would do his rounds and then after that he was suppose to close the gate and take in chairs and stay by the switchboard.

Q To your knowledge do you know whether Mr. O'Toole was required to have anything to do with outdoor furniture?

A Yes, he was suppose to take it inside.

Q From where?

A It's right outside the -- like, you know, right outside the building.

There is chairs.

Q Did you ever give him instructions with respect to --

A Whatever Mr. Hagler told me to tell him that evening I would tell him.

Q Did Mr.Hagler ever give you instructions to tell Mr. Hagler to bring in the -- bring the outdoor furniture in?

A He would tell me to tell Donald -- to tell Don.

Q Did you so instruct Mr. O'Toole?

A Yes, I did.

Q To your knowledge did Mr. O'Toole follow these instructions?

A Not to my -- not to my knowledge.

MR. EISENBERG: Objection..

JUDGE SARRICA: What basis?

MR. EISENBERG: I believe the witness testified she may only see him from 10 to 10:30 and therefore would be incompetent to answer that question.

MR. SCHWARTZ: I said to her knowledge, if Your Honor pleases.

JUDGE SARRICA: Overruled.

A Am I -- to my knowledge if Don did it?

Q Yes.

A No.

Q He didn't or --

A No, I am saying like in other words, it's the hours that we worked.

Q Yes.

A I was there until 10:30.

Q I see.

A And if the chair -- I mean I don't -- if the chairs were taken in or not, I don't know because I went home at 10:30 by I would just leave word for Donald what he had to do, what was told to me.

Q Did you ever leave him instructions to lock the gates?

A Lock the gates, yes.

Q Did you pass these instructions on to Donald O'Toole?

A Yes, I did.

Q Did you ever get complaints from people residing in the Home that they were unable to contact the switchboard during the evenings that Mr. O'Toole was on duty?

A There was one time, yes.

Q Who was that?

A That was -- I believe it was just around the Jewish Holidays, there was a lady that was very sick and I was -- I told Don the same thing he had to sit by the switchboard because Mrs. Feifer was ill, and when I came into work, whichever night that was, I was told by some of the residents that they could not reach Donald.

Q Did this occur to your knowledge on any other occasion but this one?

A Not that I know of.

I just know of that particular one.

MR. SCHWARTZ: All right.

No further questions.

CROSS EXAMINATION

Q (By Mr. Reich) Mrs. Duffy, are you a member of any union?

A Yes, Local 4.

Q And have you paid any dues to Local 4?

A Yes, I have, six dollars a month.

Q How is that paid?

A It comes out of my pay, six dollars.

Q Taht's been taken out every month?

A Yes, it has.

Q Has any initiation fee ever been taken out?

A No, I never had to pay any initiation fee.

Q When did you begin working?

A I started in April.

Q April of what year?

A 1974.

Q Before May 1st of '74?

A That's right, yes.

Q And is that why you didn't have to pay any initiation fees?

A That's what I was told, yes.

MR. REICH: No further questions.

Q (By Mr. Eisenberg) Is it Mrs. Duffy?

A Yes, it is.

Q How did you give Donald O'Toole these instructions?

A Well, when Don comes in I would tell him that Mr. Hagler -- I would write them down first most of the time and I would tell Donald, Donald don't

forget to take in the chairs and close the gates and make sure you sit by the switchboard especially when somebody is sick.

Q What do you say to him?

A I just say Donald, Mr. Hagler said for you to take in the chairs, sit by the switchboard, I would tell him if there was anybody that at that precise time who is sick, in other words, if somebody is sick naturally being I work there I would know who it was and I would leave a message on the desk for Donald.

Q Did Mr. Hagler tell you though to tell him if somebody was sick that he wasn't to make rounds that night?

A Never.

Not to make rounds.

Q He had to make rounds?

A Yes, he made his rounds, yes.

Q Right.

He would be away from the switchboard for -- when-- well, I withdraw that.

A Yes.

MR. EISENBERG: I withdraw that.

Q To your knowledge did there ever come a time when the gates were in disrepair?

A Well, the only time is when I returned to work, I was told by some of the residents that certain things were done.

MR. SCHWARTZ: Objection.

He said to her knowledge.

Q (By Mr. Eisenberg) When the gates were in disrepair?

A What do you mean, they weren't working?

Q Right.

They might have been damaged in any way?

A Not that I know of, no.

MR. EISENBERG: No further questions.

MR. SCHWARTZ: No further questions.

JUDGE SARRICA: You are excused.

(Witness excused.)

MR. SCHWARTZ: Mr. Westheimer.

JUDGE SARRICA: Raise your right hand please.

Whereupon,

MARTIN WESTHEIMER

having been called as a witness, and having been first duly sworn by the Judge, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Schwartz) Will you state your full

name for the record, please?

A Martin Westheimer.

Q And where do you reside, sir?

A I reside at Gloria's Manor.

Q Are you a resident?

A I am a resident of Gloria's Manor.

Q How long have you been a resident?

A I beg your pardon?

Q How long have you been a resident?

A A year -- about a year and a few months, I would say, about 14 months.

Q About 14 months?

A Yes.

Q Do you know Donald O'Toole?

A I do.

Q How do you know Donald O'Toole?

A I relieved him at the switchboard in the mornings in an interim before the day telephone operator would come on, that was a voluntary thing on my part, I was familiar with switchboard operating in my younger days and as a sort of a theraphy I went down there in the morning to releive him.

Q Mr. Westheimer, did you know Donald O'Toole -- did you know what Donald O'Toole was suppose to be -- what the -- what his job duties were?

A Yes.

Q Would you tell us to your knowledge what his job duties were?

A Yes.

Q Will you tell us?

A Yes.

Donald O'Toole would relieve the switchboard operator at around 10 or 10:30, whichever it was, I am not sure of that, and take over for the night in order that he would be on duty at the switchboard in case of an emergency, emergency of course consisting of sudden illness.

JUDGE SARRICA: Excuse me.

I am sorry, sir --

THE WITNESS; I am sorry.

Am I going to fast?

JUDGE SARRICA: No, you are going way beyond the question.

Confine yourself to the question.

THE WITNESS: I am sorry.

Q (By Mr. Schwartz) Did --were there occasions when you observed Mr. O'Toole away from the switchboard?

A Yes.

Q And on these occasions where did you see him?

What was he doing?

A Well, I have seen him at the rear of the lobby, the switchboard situated in the front of the lobby.

I have seen him at the rear of the lobby.

Q What was he doing there?

A Watching a television program at the time.

Q Did you report this incident to Mr. Hagler?

A No, I didn't report it.

Q Did you mention it to Mr.Hagler?

A I wasn't asked and I didn't report it, no, sir.

Q Did you ever tell Mr. Hagler anything about outdoor furniture being left outside?

A Yes, sir.

Q When was this?

A I can't pinpoint the date.

Q Were there more than one occasion?

A There were a couple of occasions.

Q Was there furniture left out in the evening, to your knowledge?

A They were left outdoors, out of the building.

Q During the evening is the question?

A All night.

Q All night?

A Yes.

Q And do you know whether -- strike that.

To your knowledge do you know whether residents of Gloria's Manor complained to Mr. Hagler about the unattendance of the switchboard during the evening?

A Yes.

MR. EISENBERG: Objection.

JUDGE SARRICA: Sustained.

MR. SCHWARTZ: To his knowledge.

JUDGE SARRICA: Get the specifics.

Q (By Mr. Schwartz) Were you ever present when residents complained to Mr. Hagler about the unattendance of the switchboard during the evening?

A During the night?

Q Yes.

A Yes, I was one of the complainants.

Q You complained to Mr.Hagler?

A I did.

Q When was this?

A I was ill.

When it was -- I can't pinpoint the date.

Q What year?

A '74.

Q Was it in the spring, summer or fall?

A Toward the fall, towards this time of the year or a little before that.

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Q All right.

Go ahead.

You were ill and what happened?

A I -- from my room I attempted to reach the switchboard and asked for some assistance.

I received no reply.

Q And over what period of time did this occur, did you try more than one time?

A Yes.

Q How many times did you try to reach the switchboard?

A I would say about three times.

Q And you reported this to Mr. Hagler?

A I did.

Q On the occasions that you came down in the morning when Mr. O'Toole was suppose to still be on the switchboard, did you ever find the switchboard unattended?

A Once.

Q Did you report this to Mr. Hagler?

A I dd.

Q I am sorry, I didn't hear the answer.

A I did.

Q When did this occur to the best of your knowledge?

HK:law

PROCEEDINGS

JUDGE SARRICA: On the record.

I take it that Respondent-Employer is calling Mr. Hagler to the stand?

MR. SCHWARTZ: Yes, ma'am.

JUDGE SARRICA: Thank you.

You are the same gentleman who was sworn in.

Consider yourself still under the same oath.

THE WITNESS: Thank you. Yes.

JUDGE SARRICA: Thank you.

Whereupon,

JOSEPH HAGLER

the witness on the stand at the time of recess, having been previouly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION

Q (By Mr. Schwartz) Mr. Hagler, you have been in this courtroom and-- Have you been in this courtroom and heard Miss Curry testify in this proceeding?

A Yes.

Q During the course of her testimony she stated that she had a conversation with you before an election

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to be conducted by The National Labor Relations Board and you asked her what she thought of Local 1115.

Did such a conversation take place?

A No, sir.

Q Was there any conversation with her and you as to the selection between Local 1115 and Local 4 in an election?

A There was no such election. There was no conversation between us.

Q Do you know when Kathryn Curry was first employed?

A Kathryn Curry was first employed at the end of September -- somewhere about the 26th or 27th of September.

Q Now, those employees that were hired after the collective bargaining agreement was -- with Local 4 -- was executed and after Local 1115 was on the scene, what, if anything, did you tell employees that were hired at that particular time?

A Every employee that was interviewed by me was told that we have a contract with Local 4 and that they were the union on the scene, and that there was a Local 1115 that was trying to -- sort of making some kind of disturbances here but my contract was with Local 4 and to me, frankly, it made no difference what they thought about unions, I couldn't care less.

Q Did you ever tell Kathryn Curry that you had heard

that she had arranged a meeting with Local 1115?

A No, sir.

Q Did you ever tell Kathryn Curry that you had heard that she arranged a meeting with Local 1115 and that it did not mean a thing because you had a contract with Local 4?

A No.

Q She testified that she had a conversation with you with respect to Local 4's contract.

Did she have such a conversation with you?

A Yes, she did. She came in and she spoke--

Q I did not ask you that.

A I'm sorry.

Q In regard to this conversation concerning Local 4's contract that you just testified that you had with Kathryn Curry, what did she say to you and what did you say to her?

A She came in to me and she said to me that she would like to discuss -- let me find the right words -- whether to renegotiate the contract or whether to add things to the contract, words to that effect.

And I said that I would have to call my attorney and discuss it with him.

Q As a result of conversations with your attorney

what, if anything, did you do concerning the request she made?

A Well, I said to her that I spoke to my attorney, by attorney said to me, of course this is a binding contract, but that we could add things to it, and I would be very happy to sit down and to -- to assert things to the contract.

Q Now were you present in the courtroom when Mr. William Cleary testified?

A Yes, I was.

Q Did you hear him testify to an occasion when he had quit?

A Yes, sir.

Q Did you hear him testify that he--his reason for quitting was that you were speaking to him, harassing him concerning Local 1115; do you recall that?

A I recall h im saying that; yes.

Q Is that a true statement?

A No, sir.

Q Can you tell us the reason--

A Yes.

Q -- he quit?

A Yes. On many occasions Billy Cleary came late to work, and it was becoming very annoying, it was upsetting my daily work routine and a number of times I had mentionned it to him quietly, each time calling him into

my office -- that is where I usually discussed any problems I had with any of my employees, and finally it was done on a continuous basis, and I finally just told him, I said, "Billy, this can't go on any longer, either you come to work on time or you just can't be responsible for the position that you are holding." And I then left.

Q What did he say or do?

A He said, "I'm sorry, Joe. I know I have been coming late, but I will try my best not to do it."

I said, "But what you have been telling me this all along and it can't go on any longer."

And that was the end of the conversation and I walked away from it.

Q What did he do?

A I was told later by my switchboard operator that he left--he punched the time card and he was ready to leave.

I then called him into my office and I said my argument was not--was not given to him to fire him because if I wanted to I certainly had enough cause to do it based on all the times that he was late.

It was just to indicate to him the importance of being punctual to work and it was not for the purpose of firing him--of making him quit or firing him.

If he can see his way clear to be on time and to watch the job the way he is supposed to, then I would like him to punch back in and to go bafk to work.

And Billy said, "I'm sorry, I was upset because you yelled at me for being late. And I now see it. I will now punch back in and I will go back to work."

A Mr. Cleary testified that at a time you returned to him the dues that were--that was checked off from his salary, I think the total was thirty dollars, that you said to him that you were giving him back the dues because the union instructed you to do this and--and the statement from the union was that they did not want him in the union.

Is that true?

A No, sir.

Q Will you tell us what, if anything, you said to Mr. Cleary when you returned the thirty dollars?

A I said, "This is $30, money that was mistakenly taken off your pay and it is now being returned to you."

That's basically what I told him.

Q What did he say, if anything, when you made that statement?

A Well, he sakd, "Well, what is it for?"

I said, "Well, the check reads that it is a refund on union dues which I mistakenly took off your pay."

Q What there any discussion concerning the signing of a dues checkoff card?

A Not to my knowledge.

Q Do you recall an arbitration concerning Donald O'Toole?

A Yes, I do.

Q Did you receive a telegram from the union concerning this--

A Yes, I did.

Q -- arbitration?

A Yes, I did.

Q Do you have a copy of that telegram?

A I have a copy of the telegram.

Q Will you--

A It is right on top of my--it is right on top of my payroll books (indicating).

MR. SCHWARTZ: Will you mark this, please?

(Thereupon, the document referred to was marked Respondent Employer's Exhibit 6 for identification._

Q I show you what has been marked as Respondent's Employer's 6 for identifixcation and ask you can you tell me--

A Excuse me. I have a Respondent's Employer's 6 for identification.

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MR. SCHWARTZ: Excuse me. You do?

JUDGE SARRICA: All right. On my records, Counsel.

MR. SCHWARTZ: All right.

Can we mark this 7 then?

(Thereupon, the document referred to was marked Respondent's Exhibit 7 for identification.)

Q I show y9u what purports to be an employer's Exhibit 7, marked for identification.

I ask you if you can identify that (handing document to witness).

A Well, the envelope outside reads -- it is a Western Union telegram, the inside of it is a telegram which is addressed to Gloria's Manor.

Yes.

MR.SCHWARTZ: I move to introduce Employer's Exhibit 7 in evidence.

MR. EISENBERG: I have no objection, your Honor.

MR. REICH: May I see it, please?

MR. SCHWARTZ: Yes.

(Showing to counsel.)

MR. REICH: No objection.

JUDGE SARRICA: It is received.

(Thereupon, the document referred to previously marked Respondent-Employer's Exhibit 7 for identification, received in evidence.)

Q (By Mr. Schwartz) Now, with respect to Joan Gruenke, were you present when Miss Gruenke testified?

A Yes, I was.

Q Now, Miss Gruenke testified that she overheard a conversation between you and Wanda Sullivan and some other person by the name of Lorretta in which you told them to vote in your favor.

Did you make that statement?

A Never made any such statement.

Q At the time that Wanda Sullivan and Joan Gruenke, Mary Joan Gruenke were employed, to your knowledge was there any election where the employer was involved?

A No, sir.

Q Miss Gruenke further testified that she heard Mrs. Hagler while you were in the area present say to a porter what would happen if he did not get elected, and Mrs. Hagler is alleged to have said, "A boss could make it difficult."

Do you recall any such oonversation?

A No, sir. This election was not for me. This election was--a -- had nothing -- did not involve me in any way.

MR. EISENBERG: Objection.

I move that the last answer be stricken, your Honor.

JUDGE SARRICA: Sustained.

Q (By Mr. Schwartz) Now when you hired Wanda Sullivan, did you have a conversation with her concerning either Local 4 or Local 1115?

A I had the same conversation with all my employees and that is that there is a contract with a union on the premises.

Q All right.

When Local 4 requested that the company discharge certain employees who were delinquent in their dues, was one of those persons Wanda Sullivan?

A Yes.

Q Did you have a conversation with Wanda Sullivan concerning the statement about her delinquency in dues, union dues?

A Not -- Nothing different than with any of the other employees.

Q What did you tell these employees?

A I told these employees that my--

Q When I say "these employees," the five employees that are involved.

A We are referring to these five employees?

Q Yes.

A I told them that my bookkeeper was in error when she removed six dollars a month from their pay, that the union did not--in no way did I have any type of authorization to remove their dues from their pay and I was therefore returning this money that was taken off in error to them.

Q Well, there -- that was prior to March 3?

A That was prior to March 3.

Q All right.

Then you had a conversation-- Did you have a conversation with any of these five persons?

A Yes. When Mr.-- Yes.

Q In February, in late February?

A It was Friday, February 28 when my--

Q What year?

A 1975.

Q Four?

A 1975.

Q 5, is it?

A 1975.

Q I'm sorry.

A It was Friday, February 28, 1975, when my wife had told me--I was out, my wife had told me that Mt. Fineguerra came from Local 4 and ordered the dismissal of the--these five employees for nonpayment of dues, and my wife said "By no means"--

Q

Q Don't ell me--

A I'm sorry.

Q This is the conversation that you had with them?

A I had a conversation -- I told them that I would like to very much retain all of them in my employ; that I was very happy with their work, I was satisfied with their work, my contract called for five percent increase and I gave them two five percent increases during their period of time because I was satisfied with their work, and that is there any way could they please straighten out their businesses with the union, their matters with the union as I don't want to discharge them, I am very happy with their work.

Q Did they say anything-- Where did this conversation take place?

A This took place on a Friday afternoon, February 18, in the dining room of Gloria's Manor.

Q Who was present?

A My wife--of the employees?

Q Of all the people that were present.

A My wife was present, present was Kathryn Curry, Billy Cleary, Joan Gruenke, and Wanda Sullivan. I don't remember whether Mary Abernathy was there or not or whether it was her day off but I think four of the five

employees were present.

Q Did they say anything when you made the statement to them?

A They said to me in essence, I am trying to recall now, that we will do whatever we want. And I said if that is the case, I told you how iI feel about it. And I left.

Q Did you have a conversation with Marie Abernathy at an t ime thereafter?

A I had a conversation with Mary Abernathy on Sunday, March the 2nd when she was working.

Q Where did this conversaton take place?

A At Gloria's Manor.

Q Where in Gloria's Manor?

A It was either in the lobby or in the dining room.

Q Who was present?

A I think it was just the two of us where I--

Q What did you say to her?

A I repeated in essence the same words that I had said to the people--to the other four people.

Q I see.

What did she say?

A She answered about--she answered, again in those words, that the other people had answered.

Q Directing your attention to March 3, 1975--withdraw that.

As a result of receiving a letter from the union dated February 28, concerning their request that the company discharge certain employees because they had not paid their initiation fees and dues, did you have a conversation with any employee?

A I again--

Q Just answer yes or no.

A Yes, yes.

Q Who?

A Those employees that were there that day which again were Kathryn Curry, William Cleary, Wanda Sullivm was off that day, Kathryn Curry, William Cleary and I think it was Joan--Joan an d Mary were there.

Q Mary who?

A I'm sorry. Mary Abernathy and Joan Gruenke.

Q All right.

Where did this conversation take place?

A In my office.

Q What did you say to them?

A I said to them I received a letter from the union in which the union orders me to discharge you for nonpayment of dues, and I asked you over the course of the weekend--I don't want to discharge you, can you please,

for the last time, because I am sure that following this letter there will appear on the scene a representative of the union and he will ask for the dismissal and I would have no recourse based on the conversation that I had with my att attorney and again they said, "We know what we have to do, we are big boys and girls, we will do what we want--what we have to do."

Q Did any of them say that they had paid their dues to you?

A They said that they had--that I had taken out money for their dues and I said to them that this was done in error. I returned this money to you,. and you have all received checks for th e--for th e amounts that were taken off in error.

Q Did you on or about October4, 1974, interrogate employees concerning their membership activity and sympathy in and for Local 4 and Local 1115?

A No, sir.

Q Did you on or about October 11, 1974 and/or during the month of Octob er, November and December 1974 warn, direct, employees to give their assistance to Local 4 to refrain from becoming or remaining members of a Local 1115 or to refrain in giving any assistance or support to Local 1115?

A No, sir.

Q Did you on or about October 11, 1974 or various dates thereafter in the months of October, November, December, 1974, threaten employees with discharge and other reprisals if they did not give their assistance and support to Local 4o or if they became or remained members of Local 1115 and if they gave any assistance and support to Local 1115?

A No, sir.

Q Did you on November 10, 1974 conduct any surveillance of the meeting pla es, meetings an d activities of your employees with respect to Local 1115 or the activities of your employees in any other manner or form?

A No, sir.

Q Did you on or about November 10, 1974 and such any other dates, during the months of November and December 1974, attempt to get the impression to your employees that youwere keeping them under surveillance concerning meeting places and meetings and activities of either Local 1115 or Local 4?

A Nn, sir.

Q Did you either directly or indirectly attempt in November 10, 1974 or any time during the months November and December of 1974, actually--strike the word "actually"--any of your employees under surveillance concerning meeting places, meetings and activities of

Local 1115 and the concerted activities of your employees as to collective b a r g a i n i n g or other mutual aid and protection?

A No, sir.

Q Did you in February--on February 28, 1975, March 3, 1975 or any time during the months of November and December of 1974, urge and solicit your employees to join and support Local 4?

A No, sir.

Q Die you on March 3, 1975 offer to pay to Local 4 on behalf of its--of your employees, without the necessity of them repaying you any sum of money for the initiation fees and the dues which Local 4 required as a condition of membership?

A No, sir.

Q Did you discharge Kathryn Curry, Joan Gruenke, Mary Abernathy, William Cleary and Wanda Sullivan because of any activi that th ey might have been involved with for Local 1115 or for such other reason that they might have been active for Local 1115?

A No, sir.

MR. SCHWARTZ: Thank you.

I have no further questions, your Honor.

JUDGE SARRICA: Cross examine?

MR. REICH: Yes, your Honor.

CROSS EXAMINATION

Q (By Mr. Reich) With respect to the five employees whose names were mentioned in the last question put to you by Mr. Schwartz, at any time did you have any grounds for believing that Local 4 did not make membership available to them on the same terms and conditions generally applicable to any other of your employees?

A No, sir.

Q And did you have any grounds to believe that Local 4 had denied these five people membership for any reason other than their failure to tender or pay their periodic dues and fees uniformly required from all other employees?

A No, sir.

Q All right.

In the entire time that Gloria's Manor had been in operation, you have been connected therewith, have you not?

A Yes, sir.

Q During that entire period was there ever a election conducted by this Board or any other agency wherein Local 1115 appeared on the ballot?

A No, sir.

Q During that entire time was there ever any election

conducted where employees were asked to make a choice between Local 1115 and Local 4 or neither union?

A No, sir.

Q In short, was there ever any election conducted on--with respect to Gloria's Manor, other than the UD election which we have heard about here?

A No, sir.

Q There was a UD election conducted?

A There was a UD election conducted.

Q And no action was ever taken by this Board as a result of that UD election; is that right?

A No, sir.

MR. REICH: No further questions-- The last question which I asked you to the effect that no other--no actinn was ever taken by this Board following or as a result of the UD election, what is your answer to that question?

THE WITNESS: No, there was no action taken by this Board oa any other agency as far as the UD election is concerned.

MR. REICH: Thank you.

JUDGE SARRICA: General Counsel-- Before the General Counsel starts, I would like to ask the witness this:

You say no action was taken.

Were you advised of the results of the election by the Board?

THE WITNESS: To my knowledge-- I am trying to recollect now-- I think that the--the answer to that question is that -- but the application -- there was a withdrawal of the application for the UD election.

JUDGE SARRICA: Was the election held?

THE WITNESS: The election-- Yes, the election was held.

JUDGE SARRICA: Thank you.

MR. REICH: Thak you.

In view of your Honor's question, it seems to me rather than have this witness supply the information -- of course it is a matter of -- which you can take notice of in the Board process, but I think perhaps we can agree or stipulate that an election was held and I offer to so stipulate that a UD election was held, that a majority of the eligible employees did not vote in favor of that petition as appears from the results of the election, but that there were objections filed to the election and while those objections were pending and unresolved by the region here, the petition was withdrawn.

Is that a fair statement?

MR. EISENBERG: May we go off the record, your Honor?

JUDGE SARRICA: Yes. Off the record.

(Discussion off the record.)

JUDGE SARRICA: Back on the record.

MR. REICH: May I withdraw my offer to stipulate, and instead propose a stipulation that pursuant to the UD petition which has been alluded to in these proceedings an election was conducted by this region which did not result in any conclusive action, certification or official results and the petition was subsequently withdrawn before any determinative action had ever been taken by the Board.

I offer that as a stipulation.

JUDGE SARRICA: Shaking your heads doesn't note it for the record.

MR. EISENBERG: I will so stipulate.

JUDGE SARRICA: Thank you.

MR. SCHWARTZ: So stipulated.

JUDGE SARRICA: The stipulation is received.

You may examine, Mr. Eisenberg.

CROSS EXAMINATION

Q (By Mr. Eisenberg) Mr. Hagler, you testified that you had a conversation with five employees concerning a letter dated February 13; right?

A Yes.

Q When did you have this conversation with them?

A I had this conversation with them on--February 28 was a Friday--I had this conversation with th em on Monday, March 3.

Q Do y9u remember what time of day it was?

A It was early, the early part of the day.

Q Who were the employees?

A There was Wanda-- Wanda was over, so it had to be Joan--Joan Gruenke, Mary Abernathy, Kathryn Curry and William Cleary.

Q No one else?

A I th ink there was another one there also, Maria de la Paz.

MR. EISENBERG: I have nothing further, your Honor.

JUDGE SARRICA: You are excused.

Thank you.

(Whereupon, the witness was excused, at this point.)

MR. SCHWARTZ: Your Honor, the employer rests.

JUDGE SARRICA: Thank you.

Are you ready to proceed or do you want to take a few mirutes?

MR. REICH: Yes, your Honor. I am ready to

proceed.

JUDGE SARRICA: All right.

MR. REICH: Vincent Gulino.

JUDGE SARRICA: Raise your right hand, please?

MR. REICH: I think he was previously sworn, your Honor.

JUDGE SARRICA: Yes, I know it.

You have previously been sworn, you are under the same oath.

THE WITNESS: Thank you.

Whereupon,

VINCENT GULINO

was called as a witness and, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Reich) Mr. Gulino, I th ink you have already testified that you are the president of Local No. 4--

A Yes, sir.

Q -- the respondent union in these proceedings, sir?

A Yes, sir.

Q Now, you know the five employees who are named in

the complaint? 709

A Yes, sir.

Q All right.

During the month of January 1975, did you have any occasion to go to Gloria's Manor?

A Yes, sir.

Q How many times that Monday did you go, if you remember?

A I believe it was the latter part of January, once.

Q The latter part of January?

A Yes.

Q And on that occasion what was the purpose of your going to Gloria's Manor?

A Well, it came to our attention that the dues were nor being paid on these people, we were just catching up to our records and I noted dues were not being paid on certain people, so I went down--and I noted we did not have no authorization cards for them neither, so I went down to the home or the hotel, whichever, and I started giving out cards, telling people if they did not fill out their cards would they please fill them out and I ran across two of the people that are on the complaint here in the corridor and I gave them the cards and I told them, "Would you please sign," I sayd that your dues have not been paid and would they ple

sign a card and they in turn answered me by saying, "I am going to talk to Kathryn Curry."

Q Wait a minute.

Before we get to that. When you were talking about "they," no one knows who "they" are.

Did you talk to Mary Abernathy?

A Yes.

Q Bill Cleary?

A Yes.

Q Kathryn Curry?

A Yes.

Q Joan Gruenke?

A Yes.

Q Wanda Sullivan?

A Yes.

Q Now, did you speak to any other employees on that day?

A Yes.

Q What did you ask them to do?

A Either to sign th eir authorization cards or bring their dues up to date.

Q Now, you say you told th em to bring their dues up to date. Did you mean right-- Did you say right then and there they had to bring their dues up to date?

A No.

Q What, if anything, did you say about that subject?

A Well, there was some sort of a controversy about them talking to Kathryn Curry.

I told them, "Look, if you don't pay this dues by the 10th of February you are going to be terminated under our collective bargaining agreement."

Q You told this to who?

A To all of those that were mentioned.

Q Mary, Bill, Kathryn, Joan and Wanda?

A Right. And Mrs. de la Paz.

Q La Paz?

A Yes.

Q This was the end of January?

A Yes.

Q And you said if they do not pay their dues by the end of February they were going to be terminated?

A Yes.

Q Did any of them ask how much they had to pay?

A No.

Q Did any of-- Did any one of them, if you recall, say anything with respect to the dues?

A Yes.

Q Who, if you remember, said anything?

A I believe it was Mrs. Sullivan and Maria

La Paz, when I was in the corridor--

Q Forget Maria La Paz, because she isn't a party to this proceeding.

If you remember, what did Mrs. Sullivan say to you?

A That she has been paying her dues.

Q And what did you say to her?

A I said, "Well, the union hasn't received it."

Q Well, give us the whole conversation.

A All right.

I said, "The union hasn't receibed os. So you will have to make it good." You know.

She said, "I'm going to talk to Kathryn Curry."

And at that point she walked away from me.

Q Did she tell you how she had been paying her dues?

A No. There was no more conversation.

Q Well, did any of the other people tell you how--anything about paying their dues?

A They all told me the same answers, talk to Kathryn Curry.

Q I am speaking now about the subject of having paid their dues.

Did any of them say anything about that, other than Wanda Sullivan, if you remember?

A No.

Q Did you make any check about this paying of dues?

A Well, I mean, if I may, now--

THE WITNESS: If I may, your Honor, I would liek to tell the story because it is kind of confising, you know.

A (Continuing) After I went around the home I went into the dining room where I found th e--actually it was the six in question, around Kathryn Curry.

I went over to Kathryn Curry. I said, "Kathryn," and I started talking to her.

She said, "Get away from me; where have you been for five weeks?"

I said,"What are you talking about?"

"Don't talk to me. I don't want n o part of you."

With that I just turned an walked away from her and--and everyone says, "Yes, we are with her." And I just walked away from her and I went into the office and I got ahold of Mr. Hagler and I told him about the dues, that we haven't received the dues, and he told me that he will check into it with the bookkeeper which I believe she was not there at th e time,

and that was the end of the conversation and I left.

Q Thereafter did you find out what happened with the dues?

A It was being deducted but it was never being forwarded.

Q So did you give any instructions to Mr. Hagler or anyone else at the nursing home with respect to those dues?

A No. At that time, no.

Q After he looked into this, you were informed that dues had been taken out of the salaries of some of these people?

A Yes.

Q Now at th at time did you have any check off authorization cards in any of these people?

A No.

Q Did you know whether you were permitted or not to receive such dues--

A Well--

Q -- without checkoff authorization cards?

A Yes; sure I knew.

Q What did you know?

A That it was illegal to receive it.

Q Did you inform Gloria's Manor about that?

A Yez, I did.

Q And can you-- Did you tell Gloria's Manor or what did you tell Gloria's Manor?

A I told Gloria's Manor that it was illegal what they did, deducting the dues out of their pay and to refund their dues.

Q Now you have already told us you had a conversation with these people sometime around the end of January, and you gave them to the end of February to pay up their dues; is that correct?

A Yes.

Q To your knowledge, sir, was any dues received from any of these people during the time that elapsed from the date of this conversation to the end of February?

A None.

Q Did you then cause anything to be done about making another effort to collect these dues?

A Yes, sir.

Q What was that?

A I turned it over to Mf. Fineguerra, being I was busy out in Atlantic City and he went down to try to get them to sign membership--

Q You were not there?

A No, this is all hearsay.

Q When you were there in January was it--what was it

that Kathryn Curry said to you when they were all standing around her?

A Well, the precise words I don't remember, but in reference--where were you for five weeks.

Q What was that referring to? Do you know?

A Well, it dated back into Decemb er, the latter part of December, where we went into the employer's office to try to see if we can get--put a rider to the contract, to reopen, to get some benefits in there.

Q And--

A And that was it.

Q What did she say about that in January?

A In January she says, "Where have you been for five weeks? I have been waiting for you."

I said, "Kathryn, I am not h ere for that."

"Then get out of here, I don't want no parts of you," and the people behind me--I don't know who was behind me--were saying, "Yes, we;re with her."

Q The people who were there at that time included Mary Abernathy?

A Yes.

Q And Bill Cleary?

A I believe so.

Q And Joan Gruekne?

MR. EISENBERG: Okay.

THE WITNESS: I--

MR. REICH: I think that he already testified to this.

JUDGE SARRICA: He has.

THE WITNESS: I believe all employees in question here was in the dining room at the time--when I walked into the dining room--

JUDGE SARRICA: You have no question--

THE WITNESS: Oh.

Q Is there any doubt in your mind, Mr. Gulino, and I am referring to this day at the end of the January month, that you informed each of these people, to wit: Mary Abernathy, William Cleary, Kathryn and Wanda Sullivan, that if their dues were not paid by the end of Feb ruary, that they couldn't continue to work?

MR. EISENBERG: Your Honor, I object.

JUDGE SARRICA: Sustained.

MR. SCHWARTZ: Can I have that question read back?

JUDGE SARRICA: Yes.

Will you read the question and the answer, please?

(Record read by report er.)

MR. REICH: I am at a loss to understand the basis for the objection.

Could I possibly be enlightened?

JUDGE SARRICA: He made direct testimony along that line for one basis and I assume he is under oath, we don't question his --

MR. REICH: It is in the nature of a summary, actually.

All right.

No further questions-- Hold it.

May I ask another question, if your Honor, please?

JUDGE SARRICA: Yes.

Q (By Mr. Reich) There has been an exhib it marked, Respondent Union 1, I don't know whether it is in evidence or for identification--

MR. EISENBERG: I think it was marked for identification.

MR. REICH: The telegram.

JUDGE SARRICA: The telegram that we did not--were not able to identify when it was sent or received?

MR. REICH: Now I don't remember who was on the stand, well, whether it wax this witness or--

MR. SCHWARTZ: O'Toole.

MR. REICH: O'Toole?

MR. SCHWARTZ: You want to introduce that telegram?

MR. REICH: Well-- No further questions.

CROSS EXAMINATION

Q (By Mr. Eisenberg) I want to direct your attention, Mr. Gulino,to that January meeting with the employees.

Can you tell me where you were and which employees you spoke to on that day?

A Where I was?

Q Yes.

A In Gloria's Manor.

Q Where in Gloria's Manor?

A Through the building, the whole building, and I spoke to I believe,every one who was working on that day.

Q With respect to the other employees who were not the five employees--withdrawn.

Which employees did you speak to about dues?

A About dues?

Q Yes.

A I spoke to all of them, and if they--because I had no list in front of me, I spoke to all of them, and I handed out cards, authorization cards.

Q All of them. What do you mean by "all of them," all 21 employees?

A Anyone who was working in the place. Exactly who, I don't remember.

Q All right.

You told them something, right?

A Yes, sir.

Q Wat was that?

A If they would--if they had signed an authorization card for the dues to be deducted.

Q And you-- And I take it -- Mary Abernathy, William Cleary, Joan Gruenke and Wanda Sullivan and Kate Curry, did you give them authorizatinon cards?

A I offered it. They refused.

Q Did you speak to them together or separately, Mr. Gulino?

A Well, I spoke to them separately and then when I went into the dining room they were all together with Kathryn Curry and at that point that is when Kathryn Curry come out with "Where were you for fiv e weeks? Get out of here. I don't want to have no part of you."

And everybody was hollering in back, "Yes, we're with you," you know, it was a whole big thing.

Q Biw, when certain employees signed authorization cards--well, withdrawn..

When you handed out those cards, did certain employees sign them?

A They did not sign in front of me. They took them, th ough.

Q Okay.

Q Well, did Kathryn Curry take one?

A No. She did not even talk to me. She-- Just what she told me, that was it.

Q Did William Cleary take one?

A See-- No.

Q Wanda Sullivan?

A No, they all wanted me to talk to Kathryn Curry like I testified.

Q William Cleary did not take one?

A No.

Q Joan Gruenke did not take one?

A No.

Q When they did not take-- Well, when Kathryn Curry did not take a card did you say something to her?

A Kathryn Curry did not even want to get near me. She was talking and walking away from me at the same time.

Q Did you say anything to her, when she did not want

to take a card?

A Pardon?

Q Did you say anything to her when she did not want to take the card?

A As she was walking away I just told you, "If you don't bring your dues up to date by the end of February you are going to be terminated.

Q That is all you said?

A Yes, she said something, I don't know what she said, but I di d not pay attention.

Q As lag as you don't know, we don't need it.

Did you say anything to Billy Clear--I take it he wasn't with Kate Curry when he refused to take a card?

A He was in the first dining room that they call the Tea Room, as I was walking into -- together into the dining room, then I was distracted--I was talking to Billy and I told him that we had not received any dues and I must -- and it must be brought up to date by the end of February. Someone else came. I started to talking to them and then he went into the dining room, and that is when I walked in, right after I got done with the other party.

Q That is really all you said to them, right?

A Basically, that's it; yes.

Q How long did you speak to each of these employees?

A What could it take, a few seconds, a minute?

MR. EISENBERG: I have nothing further, your Honor.

CROSS EXAMINATION

Q (By Mr. Schwartz) Mr. Gulino, did Kathryn Curry, in January or February or March, to your knowledge, ever tell you that she was not going to take--to pay the dues, because she did not receiv e the benefits that was promised.

MR. EISENBERG: Objection.

JUDGE SARRICA: B asis?

MR. EISENBERG: Irrelevant.

MR. SCHWARTZ: Irrelevan t.

I think it is very material.

JUDGE SARRICA: Wasn't that part of the direct testimony?

MR. EISENBERG: What?

JUDGE SARRICA: Wasn't that part of th e direct testimony, when she was nn the stand?

MR. EISENBERG: Not to my knowledge.

I will withdraw the objection.

JUDGE SARRICA: Okay.

MR. REICH: Okay.

MR. REICH: Do you recall the question he asked?

THE WITNESS: N o.

MR. SCHWARTZ: Mr. Reporter?

JUDGE SARRICA: Do you want to please read it?

(Record read by reporter.)

A If I recall, I think it was that same day, but--

Q What same day?

A The same day I was there, in the latter part of January when she was walking away, she was mentioning something about -- that is where that five weeks comes in, about the benefits.

Q So your answer is what?

A Yes.

Q And it was when?

A The latter part of January.

Q Did any of the other four persons involved in this proceeding make a similar statement to you?

A No, but they were cheering her on.

MR. SCHWARTZ: I have no further questions, your Honor.

JUDGE SARRICA: Have you any questions, Mr. Reich?

MR. REICH: I have two or three questions

which probably should more properly be asked on so-called direct.

JUDGE SARRICA: I will permit it. We will go the rounds.

MR. REICH: They are pro forma.

REDIRECT EXAMINATION

Q (By Mr. Reich) Mr. Gulino, did Local 4 demand that Mary Abernathy, William Cleary, Kathryn Curry, Joan Gruenke and Wanda Sullivan be discharged by Gloria's Manor because these five had joined or assisted Local 1115 or engaged in other concerted activity for the purpose of collective bargaining and other mutual aid and protection?

A No, sir.

Q Did Local 4 demand the discharge of these five people because they did not have membership made available to them on the same terms and conditions that were applicable to other employees of Gloria's Manor?

A No.

Q Did Local 4 demand their discharge for any reason other than the failure of these five or any of them to tender the periodic dues and fees uniformly required as a condition of acquiring or retaining membershio?

A No.

MR. REICH: That is all I have.

Thank you.

MR. EISENBERG: I have nothing further, your Honor.

MR. SCHWARTZ: No questions.

JUDGE SARRICA: You are excused, sir. Thank you.

(Whereupon, the witness was excused, at this point.)

JUDGE SARRICA: We will take ten minutes at this tije.

(Whereupon, at 11:22 o'clock a.m., a ten-minute recess was taken.)

(Whereupon, at 11:30 a.m., the hearing reconvened.)

JUDGE SARRICA: Back on the record.

Raise your right hand?

Whereupon,

HENRY FINEGUERRA

was called as a witness and, having been first duly sworn, testified as follows:

JUDGE SARRICA: Please be seated.

DIRECT EXAMINATION

Q (By Mr. Reich) Mr. Fineguerra, are you connected with Local 4, the respondent union in this case?

A Yes.

Q What is your connection with that union?

A The executive vice president.

Q And were you an official of that union in February and March of 1975?

A Yes.

Q Did you have occasion to be in Gloria's Manor in that capacity as a union official on or about February 18, 1975?

A Yes.

Q Tell me what occurred on that day and with whom.

A I went to Gloria's Manor to speak to the employees in reference to dues that hasn't been paid to the union.

I stopped at the telephone operator's desk and asked her to call a list of names that I had, whoever was working at the time, so I can have a discussion with them about the dues.

She called, I think, William Cleary. He came out and I asked him what his intentions were about paying dues because I believe that they were given enough time to bring their dues up to date.

He told me he did not want any part of it, he didn't want to talk to me or discuss it.

He walked away from me and I asked

the operator to call one of the other employees. I think it was Joan or Wanda, I don't remember which one, I know there were about three or four of them that were only present at the time and they had all come out to the front desk and I discussed the same thing with them and they all told me that they -- they did not want to pay the dues and they did not want any part of it.

Q Now, there's been testimony here by some of these employees that you asked for a stated amount, it varied in different cases, $71, $72, give me $71 or else you are fired, or words to that effect.

A I believe I mentioned to them that as of that date they had owed their dues, I th ink it was four months or five months which came to like $35, the sum of $24 for some, $30 for some, plus the initiation fees of$35 which I wasn't asking for at that time.

Q Before you go on, was there any conversation between you and these five people or any of them, sir, concerning the payment of initiation fee at that time?

A At that time?

Q Yes.

A I don't remember now but I may have mentioned the fact that they still had time, you know, to pay the initiation fee and whatever arrangements could be made on it, to be paid out.

Q Did you ask them to pay you anything right then and there?

A No, not right th en and there.

Q What did you say to them?

A I had asked them what they intended to do about bringing their dues up to date and they had told me they don't want to pay any dues, they don't want no part of the union.

Q Did you refer to any past demands that had been made upon them for payment of dues?

A Yes, I had-- I reminded them that they were asked on several occasions to pay their dues and sign athorization- cards, so the dues could be properly deducted by the employer.

Q You had never asked them on the prior occasions for dues, had you?

A No.

Q Now you were in the hearing room a few moments ago when Mr. Gulino testified?

A Yes.

Q Before you went to Gloria's Manor on February 28, had had--had you had any conversation with Mr. Gulino about his visit at the end of January?

A Yes.

Q And do you remember when you had this conversation

with him?

A I don't remember the exact date.

Q Well, what did he say to you?

A He said that he was there and he had informed them that they had until the end of February to pay their dues or make some arrangements to pay them, bring it up to date or sign the proper authorization cards so the employer can deduct it, and that I was tp gp tjere at the end of February and find out what their intentinns were.

Q Now when you went there at the end of Febru-ry, you, did you say anything to these employees with respect to this Gulino visit?

A I tried to explain to them the conversations that had taken place between Mr. Gulino and these members but they wouldn't even listen to me. They just kept walking away from me.

Q When you are referring to them sas members, were they members of the union?

A I had considered them members but actually they were not members.

I like to consider everybody a member, sir.

Q And then did you go back sometime after February 28?

A Yes.

Q When was that?

A I believe I went back on a Monday, March 3, and I informed--prior to that I had informed, I believe it was Mrs. Hagler and she had informed me that she would want it in writing.

So, on a Monday I returned with a letter stating that these individuals--these persons named be discharged according to the terms of our contract with the union.

I believe I had---

JUDGE SARRICA: You have no question before you.

Q I show you General Counsel's Exhibit 24, in evidence, and ask you if that is a copy of the letter (handing document to witness).

A Yes.

Q Now, I note on that letter that there are three names typed and three names written in.

Do you remember how that came about?

A On the Friday that I was th ere on February 28, actually there were only three typed names, William Cleary, Maria La Paz and Kathryn Curry on probably--on Monday I believe I spoke to Joan Gruenke and Mary Abernathy and I asked--I had--hand delivered this to Mr. Hagler myself and I asked him to return it to me

so I can add these names in. That is why they were written in.

Q Did you add those names?

A Yes.

Q Now, still referring to this letter, GC 24, you had given it to Mr. Hagler originally on the 28th; is that right?

A N o.

Q Friday?

A No.

Q Who did you give to-- Who did you give it to on Friday?

A I didn't have it with me on Friday. I verbally demanded their discharge--

Q I see.

A -- which was refused.

Q All right.

Were you asked at that time to bring in--

A Right, some sort of authorization.

Q Okay.

Mr. Fineguerra, did you ever demand of any of these five people that they pay you at -- a flat amount of money right then and there, seventy-one or seventy-two dollars, or they were out?

A No.

Q And I am using the term or the figure of seventy-one or seventy-two dollars only as an illustration.

Did you demand the payment of any flat sum of money?

A No.

Q Did you ever say to them or any of them on the 28th or the 30th or the 5th or at any other time that unless their initiation fee was paid in full they were out?

A No.

Q Were they treated in any manner that is different from any other employees that were working at Gloria's Manor?

A No.

MR. REICH: I have no further questions, your Honor.

Thank you.

CROSS EXAMINATION

Q (By Mr. Eisenberg) Mr. Fineguerra, I must have missed it in your direct testimony. Who are the employees you spoke to on February 28?

A I don't remember now exactly who they are. I believe it was William Cleary and Joan Gruenke and Maria La Paz, I think. I don't remember exactly, sir. I haven't met these people more th an once or twice.

Q I take it you asked them to sign authorization cards?

A I asked them what they intended to do about paying their dues and to sign--if they would sign the authorization cards so the employer could deduct their dues legally because I had known that the dues were refunded to them, it was taken out illegally.

Q You just told them in general, I guess, they owed some back dues?

MR. REICH: Objected to as to form, your Honor.

Both the term "in general" and the term "I guess" certainly make the question improper, your Honor.

JUDGE SARRICA: Please rephrase it.

Q (By Mr. Eisenberg) You told these employees they owed some dues; is that right?

A I had explained to them that they owed dues, yes, sir.

Q You said all the people you were speaking to were together; is that right?

A The first one I spoke to I believe was William Cleary and then I had given the telephone operator a list of names to call and then they all started to come out and they were all gathered around at one time.

Q So you spoke to them all at one time?

A Right.

Q What did you tell them about the dues? What dues?

A That they owed dues and what did they intend to do about paying it.

MR. EISENBERG: Thank you.

I have nothing further.

CROSS EXAMINATION

Q (By Mr. Schwartz) Sir, directing your attention now to February 28 when--after you spoke to these people that you testified about, did you then have any conversation with the employer, any representative of the company, sir?

A Yes.

Q And who was that?

A I nelieve it was Mrs. Hzgler. I had asked for Mr. Hagler, but he wasn't available.

Q He was not there?

A No.

Q Did you leave a message with Mrs. Hagler for Mr. Hagler?

A Yes.

Q Did you tell her-- What if anything eid you tell her?

A Well, I went in to demand the discharge of these people.

Q Did you tell her the reason why?

A Because they had not paid their dues or refused to make any arrangements to pay it. She wanted to invite--

Q She asked you what?

A She asked me to bring in some authorization.

Q In writing?

A Which she wouldn't do anything at that time.

Q I show you Employer's Exhibit 7 in evidence and ask you if you caused--if you prepared that telegram and caused to have it sent (handing).

A Yes.

Q I have an exhibit R, union, which was marked, I assume, for identification, and I show you, sir, this telegram and ask you if that is not almost identical to Employer's Exhibit 7, except for the name of the party to whom it was sent (handing).

A Yes.

MR. SCHWARTZ: I move and offer this telegram in evidence as Employer's Exhibit--

JUDGE SARRICA: Which will that be, 8?

MR. SCHWARTZ: Yes, ma'am.

MR. EISENBERG: No objection.

MR. REICH: No objection.

JUDGE SARRICA: Received.

(Thereupon, the document referred to was marked Employer's Exhibit 8 in evidence.)

MR. SCHWARTZ: I have no further questions.

JUDGE SARRICA: Permission is granted to withdraw the originals and substitute copies.

MR. EISENBERG: Thank you.

MR. SCHWARTZ: That is all, your Honor.

JUDGE SARRICA: Do you have any cross on this-- Any redirect?

MR. REICH: No, ma'am.

JUDGE SARRICA: Do you have any further cross examination on this?

MR. EISENBERG: Yes.

JUDGE SARRICA: You may proceed, Mr. Eisenberg.

MR. EISENBERG: Thank you.

FURTHER CROSS EXAMINATION

Q (By Mr. Eisenberg) Mr. Fineguerra, I am referring to Respondent Employer's Exhibit 8, in evidence, sir.

When did you send this telegram (handing document to witness).

A It would be the date that is on it, I guess. Let me see.

Q What, actually, is that telegram?

Is that the telegram you sent to Mr. O'Toole?

MR. SCHWARTZ: Objection.

The telegram speaks for itself.

JUDGE SARRICA: Overruled.

MR. REICH: I object to the question, your honor.

The exhibit is in evidenc and on its face it states what it is, that it is a confirmation copy of th e following message.

If your Honor would look at it, please, you would see it so states right on the face of the document.

JUDGE SARRICA: I will overrule the objection and let him testify.

A This is a copy of a telegram--one copy of several telegrams that I sent out this particular date notifying the employees, the employer, the Arbitrator of the hearing that was taking place, and this I done on the telephone in the office of Local 157, and also requesting copies of the message that was sent to these people.

Q Copies of the message that was sent?

A Yes; right.

Q I see.

A And these are copies of the exact message that went out.

Q And they went out--do you remember the time of day--I will withdraw that.

A If the time is there--

JUDGE SARRICA: He withdrew the question?

A Probably in the morning.

Q Did you attend that arbitration proceeding?

A No.

MR. EISENBERG: I have no further questions, your Honor.

MR. SCHWARTZ: No questions.

MR. REICH : No questions.

JUDGE SARRICA: You are excused.

THE WITNESS: Thank you.

(Whereupon, the witness was excused, at this point.)

MR. REICH: Respondent Union rests, your Honor.

JUDGE SARRICA: Thank you.

Is there any rebuttal?

MR. EISENBERG: There is no rebuttal, your Honor.

MR. SCHWARTZ: I would like to make a motion to have the complaint dismissed in its entirety at this